

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 12 MARCH 2025

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 12 March 2025
via teleconference
Commencing at 10:00 AM**

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ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Development Determination Panel acknowledges the traditional custodians of these lands on which we gather and pay respect to Elders past and present.

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF THE DEVELOPMENT DETERMINATION PANEL MEETING HELD ON 26 FEBRUARY 2025

RECOMMENDATION

That the Panel notes that the minutes of the Development Determination Panel Meeting held on 26 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	DA2024/1729 - 10 SMITH STREET MANLY - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING
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PURPOSE

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

RECOMMENDATION

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2024/1729 for alterations and additions to a semi-detached dwelling on land at Lot B DP 437840, 10 Smith Street MANLY, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2025/146728
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - FSR

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1729
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Responsible Officer:	Lachlan Rose
Land to be developed (Address):	Lot B DP 437840, 10 Smith Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Jill Louise Tunbridge

Application Lodged:	07/01/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	16/01/2025 to 30/01/2025
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 37.35%
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	\$ 415,800.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a semi-detached dwelling.

The application is referred to the Development Determination Panel (DDP) due to a proposed variation of greater than 10% to the floor space ratio (FSR) development standard as established by Clause 4.4 Floor space ratio of the Manly Local Environmental Plan 2013.

There are no concerns raised by objectors during the assessment period.

Critical assessment issues include a variation to the FSR development standard, as well as the side setbacks, total open space and landscaped area.

The 4.6 request for the non-compliance with FSR standard arises from a 0.41m² increase in

floorspace. The existing building has an existing floorspace which is at 36.8% above compliance with the LEP based on historical approvals with the proposal increasing this to 37.35%. The additional floorspace does not drastically increase the bulk or scale of the building.

Additionally, the 4.6 request also arises for the non-compliance with FSR standard due to an undersized allotment. It is noted that the FSR does achieve compliance with the FSR variations permitted within Manly DCP for undersized allotments.

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

PROPOSED DEVELOPMENT IN DETAIL

The development is described as alterations and additions to a semi-detached dwelling.

The proposal includes:

Demolition works

- Demolition to the existing first floor and ground floor roof to the rear
- Internal demolition to the ground floor

Ground floor

- Porch with stair to be made good as existing
- Internal alterations to the bathroom, laundry kitchen and living area
- Staircase to the first floor
- Windows W01, W02, W03 and door D01

First floor

- Re-construction of the first floor including a master bedroom, ensuite, stair access and bedroom 1
- Windows W04, W05, W06 and W07

Roof

- New rear ground floor and first floor roof with metal sheeting with skylights SK01, SK02 and SK03

A deferred commencement condition of consent applies to the existing unauthorised building works to the rear hard stand area and sliding stacking door. A Building Information Certificate is to be submitted to the Building Compliance section at Council to attempt to regularise all unauthorised building works that are not subject to this development application.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R1 General Residential
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
 Manly Local Environmental Plan 2013 - 5.21 Flood planning
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot B DP 437840 , 10 Smith Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Smith Street. The site is regular in shape with a frontage of 4.51m along Smith Street and a depth of 30.48m. The site has a 4.39m secondary frontage to Smith Lane. The site has a surveyed area of 136.8m². The site is located within the R1 General Residential zone and accommodates a two-storey semi-detached dwelling with a hardstand area to the rear lane. The site is relatively flat with no significant change in slope. The site includes landscaped areas with one tree to the rear and a garden area to the front. There are no known

threatened species on the subject site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development including semi-detached dwelling houses, detached dwelling houses and residential flat buildings.

Map:



SITE HISTORY

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

- Application **BC2020/0135** for Building Information Certificate (BIC) - Unauthorised works in relation to application 10.2016.279.1. The BIC was lodged due to the works for Application 10.2016.279.1, which were constructed by an unlicensed builder and therefore, resulting in no certifications throughout the construction process. The application was deferred following an initial assessment to provide additional information. Following correspondence with the Building Compliance Department, the applicant withdrew the BIC application and lodged this subject DA to rectify the unlawful works and maintain the as built rear works. This application includes a deferred commencement condition which results in the approval of a BIC for any unlawful works proposed to be maintained, prior to the commencement of this application.
- Application **10.2016.279.1** for Alterations and additions to the existing semi-detached dwelling including first floor extension with Juliette balcony, internal alterations, changes to windows, a new hard stand car space and new gate to the rear fence was approved on 23/11/2016 by DAU.

- Application **10.2004.380.1** for Section 82A Review - Alts & Adds to Dwelling incl. new first floor add was approved on 23/03/2005 by delegated authority.
- Application **11.2004.380.1** for Section 82A Review - Alts & Adds to Dwelling incl. new first floor add was refused on 23/09/2004 by delegated authority.

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	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 16/01/2025 to 30/01/2025 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	SUPPORTED SUBJECT TO CONDITIONS The subject site is flood affected and as such on-site stormwater detention is not required. Connection of stormwater to the existing kerb outlet is acceptable. Development Engineering support the proposal, subject to conditions as recommended.
NECC (Flooding)	SUPPORTED WITHOUT CONDITIONS The proposal is for alterations and additions to an existing dwelling, including ground floor internal alterations, additions to the first floor, and new roofing. The proposal is assessed against Section 5.4.3 of the Manly DCP and with Clause 5.21 of the Manly LEP. The majority of the proposed works are not affected by the Low or Medium Flood Risk precinct. The proposed works to make good the existing entry stairs are generally compliant with the DCP. The proposal generally complies with Section 5.4.3 of the Manly DCP and with Clause 5.21 of the Manly LEP.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS- SUPPORTED SUBJECT TO CONDITIONS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject property is within Pittwater Road Conservation Area and in close proximity to two heritage items, listed in Schedule 5 of the Manly LEP 2013: Item I223 - Street trees - Smith Street (from Pine Street to Carlton Street, and around the intersection with Alexander Street) Item I2 - All stone kerbs - Along eastern side of Smith Street
	Details of heritage items affected
	Pittwater Road Conservation Area <u>Statement of Significance</u> This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively. <u>Physical Description</u> The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually significant buildings which are listed

Internal Referral Body	Comments		
	seperately. Adjacent streets generally comprise a consistant pattern of one and two story residential cottages, with the occasional terrace. Some streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical and vegetated backdrop. Item I223 - Street trees <u>Statement of Significance</u> Aesthetic. Unique tree species used for street planting. Only one of its type within the Manly Municipality. <u>Physical Description</u> Unique planting of Tuckeroo (Cupaniopsis Anacardioides) and Avenue effect created with further planting of Brush Box (Lophostemon Confertus) c. 1920's Item I2 - All stone kerbs <u>Statement of Significance</u> Stone kerbs are heritage listed. <u>Physical Description</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	The proposal seeks consent for alterations and additions to existing semi-detached dwelling house, which is one of a group of four semis - being 6, 8, 10, 12, built in the early 1900s, which are generally consistent in appearance and make a positive contribution to the Conservation Area with their intact front elevations and roof forms facing Smith Street. The proposed works consist of internal refurbishment works and all external works are mainly confined to the rear including changing the existing metal roof form. The survey plan submitted		

Internal Referral Body	Comments
	with this application show the original roof ridge level as RL 12.30, however the architectural drawings are showing that the new metal roof meets with the main roof at RL 12.348, which must be below the original ridge level to maintain the existing roof form along the group of semis and retain their contribution to the HCA. The proposed changes to the rear lane are considered tolerable, given the secondary significance of the lane compared to the significance of Smith Street and the alterations changing the roof form and appearance of the rear addition are considered to be similar to the style of the other semis. The only works proposed to the front of the semi is retiling the entry steps and porch. Given the proposed works do not involve any changes to the front facade or front fence and the proposed color scheme is neutral, the impact of the proposal upon the significance of the HCA and the heritage items is considered acceptable. Therefore, no objections are raised on heritage grounds subject to one condition. <u>Consider against the provisions of CL5.10 of MLEP 2013.</u> Is a Conservation Management Plan (CMP) No Required? Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1763979_02 dated 09 December 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) 2021Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021**Chapter 4 – Remediation of Land**

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

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	6.7m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (82.08sqm)	FSR: 0.824:1 (112.74sqm)	37.35% (30.66sqm)	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment**Zone R1 General Residential**

Land use definition: MLEP 2013	Permitted or Prohibited
Semi- detached dwellings	Permitted with consent

The underlying objectives of the R1 General Residential zone:

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

Comment:

The proposal does not result in an increase to the dwelling density of the subject site. The development will provide for the housing needs of the community within a general residential residential environment

It is considered that the development satisfies this objective.

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

Comment:

The proposal will maintain the existing housing type and density with the inclusion of the alterations and additions.

It is considered that the development satisfies this objective.

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

Comment:

The proposal will not result in changes to the existing land use of a semi-detached dwelling house and therefore, will enable the day to day needs of residents.

It is considered that the development satisfies this objective.

4.4 Floor space ratio

Detailed Assessment

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

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

Comment:

The proposed development is for alterations and additions to the existing semi-detached dwelling house including a first floor addition. The proposal will not result in unreasonable bulk and is consistent with the existing and desired streetscape character.

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

Comment:

The development is of a bulk and scale to compliment the building density of the site area and development does not obscure important landscape and townscape features.

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

Comment:

The proposal maintains an appropriate visual relationship between the existing semi-detached dwelling house and the alterations and additions including the first floor. There will be no detrimental impact to the landscape of the area.

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

Comment:

The development will not result in adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.

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

Comment:

The proposed development is located in residential zoned area and is not located in a local centre or business zone.

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

4.6 Exceptions to development standards

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

Development standard: Clause 4.4 Floor Space Ratio
Requirement: 0.6:1
Proposed: 0.824:1
Percentage of variation: 37.35%

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 purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards and that the application should be assessed on a greater numerical figure, accounting for the sites constraints and the unique nature of the locality.
- The application is consistent with similar approvals within the area.
- The proposal is capable of achieving a better development and design outcome of the existing development.
- Notwithstanding the non-compliance with Clause 4.4, the development complies with the exemption provisions of Clause 4.1.3 of Manly Development Control Plan 2013 (MDCP). In accordance with Clause 4.1.3, the proposal will satisfy the exemption whereby the variation to Clause 4.4 is to be no greater than the achievable gross floor area for the minimum lot size (pursuant to Clause 4.1.3 "Lot Size Map"). With this consideration, the 112.74sqm of gross floor area proposed will result in an FSR of 0.451:1 (based on 250sqm), complying with the DCP variation provision.
- Compliance with the objectives of Clause 4.4 and Clause 4.1.3.
- Compliance with Clause 3.4.2 Privacy of MDCP.
- It is of the applicants professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character. The applicants opinion is formed that the developments bulk and scale is consistent with the existing and future character of the area.

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

Comment:

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

grounds to justify contravening the development standard:

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

The Clause 4.6 Request argues, in part:

"Previous Development Consent and Manly Development Control Plan – Control 4.1.3

- The site is the subject of DA279/2016 which approved FSR 0.81:1 (110.9sqm) through the provisions of Manly DCP Control 4.1.3.
- The assessment and approval granted proved there are reasonable environmental planning grounds to warrant a variation in this instance.
- The proposal for majority retains the footprint and envelope as approved under DA279/2016, albeit with minor design changes to accommodate the owner of the site.

"Context

- The area surrounding the subject site is characterised by 1 to 2 storey dwellings, with varying front and rear setbacks.
- 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 to the first floor which is consistent with the approval under DA279/2016.
- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:
 - DA2022/0741 – 15 Carlton St Manly – 0.84:1 – 39.44% 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.
- 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 30.84sqm 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).

"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."

The applicant's Clause 4.6 Request is generally supported. The subject site has a previous approval under DA279/2016 with a 0.81:1 (110.9m²) FSR. This resulted in a variation of 35% , where the proposed development will contribute to an increase to the variation by 2.35%. The approved works of DA279/2016 where undertaken unlawfully without a construction certificate and the proposal seeks to demolish the approved unlawful works to seek a re-approval. Additionally, this application does not include the approval for any retrospective works that were unlawfully constructed and a Building Information Certificate is sought for the as built works from DA279/2016 that are not included in this application.

It is also acknowledged that the non-compliant GFA/FSR will not result in unacceptable streetscape or any adverse residential amenity impacts in terms of views, privacy or solar access from the existing development. There are multiple semi-detached dwellings in the immediate locality with Clause 4.4 variations to the development standard. The applicants Clause 4.6 Request adequately addresses the objectives of this development standard and demonstrates that compliance with the development standard is unreasonable or unnecessary. In summary, it has been demonstrated that the proposed development is compatible with surrounding character.

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

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

Public Interest:

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

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances, the Clause 4.4 Floor Space Ratio variation arising due to the existing built form, extension to the first floor GFA and its minimal impacts to the bulk and scale of the site, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

5.10 Heritage conservation

Council's Heritage Officer has provided a referral response under the 'Referrals' subheading of this report. In summary, the Heritage Officer states:

Given the proposed works do not involve any changes to the front facade or front fence and the proposed color scheme is neutral, the impact of the proposal upon the significance of the HCA and the heritage items is considered acceptable.

Therefore, no objections are raised on heritage grounds subject to one condition.

Subject to an additional condition named 'Main roof ridge level', the proposal is supported subject to Clause 5.10 Heritage conservation.

5.21 Flood planning

Councils Flood Officer has provided a referral response under the 'Referrals' subheading of this report. The Officers comment states:

The proposal generally complies with Section 5.4.3 of the Manly DCP and with Clause 5.21 of the Manly LEP.

The proposal is therefore supported.

Therefore, it is considered that the development complies with Clause 5.21 Flood planning.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 136.8sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250sqm	1 dwelling 136.8sqm	45.28% (113.2sqm)	No (no change)
	Dwelling Size: 107sqm	112.74sqm	N/A	Yes
4.1.2.1 Wall Height	N: 6.5m (based on gradient 0)	6.4m	N/A	Yes
	S: 6.8m (based on gradient 1:20)	5.8m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.4m	N/A	Yes
	Pitch: maximum 35 degrees	26 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	2.9m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 2.13m (based on wall height)	nil/ 0m	100%	No
	S: 1.17m (GF) 1.93m (FF) (based on wall height)	GF: Nil- 0.79m FF: Nil- 0.89m	Max 100%	No
	Windows: 3m	S: 3 windows at 0.89m 1 window at 0.7m	Max 77% (2.3m)	No
	Secondary street frontage: Prevailing setback / 2.13m	6.3m, consistent with prevailing setback	N/A	Yes

4.1.4.4 Rear Setbacks	8m	6.3m	N/A	N/A (See Control 4.1.4.2)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (75.24sqm) of site area	28.7% (39.3sqm)	47.7% (35.94sqm)	No (no change)
	Open space above ground 25% (8.985sqm) of total open space	16.8% (6.6sqm)	N/A	Yes (no change)
4.1.5.2 Landscaped Area	Landscaped area 35% (13.755sqm) of open space	10.2% (4sqm)	70.92% (9.755sqm)	No (no change)
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	0 spaces	100%	No (no change)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	N/A
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.4.2 Awning supported from the ground	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
Schedule 3 - Parking and Access	Yes	Yes

Detailed Assessment

4.1.1.1 Residential Density and Dwelling Size

Subject to Section 4.1.1.1 of the Manly Development Control Plan 2013, the minimum residential density for the D3 area is 250m² of site area per dwelling.

There is a site area of 136.8m² and therefore presents a technical non-compliance with the minimum residential density control. It is important to note that the semi detached dwelling house on the site is existing and the proposal does not seek to increase the number of dwellings on the site.

As such, it is considered that the variation to the minimum residential density control is acceptable on this basis and a detailed assessment is not required.

4.1.3 Floor Space Ratio (FSR)

The MDCP Clause 4.1.3 Floor Space Ratio (FSR) provides guidance in assessing the floor space ratio of undersized allotments.

The site is located in 'Area C' on the MLEP Lot Size Map zoned in area requiring the minimum lot size of 250sqm. The proposed site has a surveyed area of 136.8sqm. Clause 4.1.3 Floor Space Ratio states:

The extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 in this plan is to be no greater than the achievable FSR for the lot size indicated in Figure 30 - Extent of FSR Variation for Undersized Lots.

In this instance, the exception is to be no greater than the calculation of FSR based on 250sqm lot size/ site area. This would result in a FSR of 150sqm or 0.6:1 based on the 250sqm lot size.

Using this calculation, the FSR of the proposed development is 0.451:1 or 112.74sqm, which complies with the maximum permitted 0.6:1 FSR.

A detailed assessment of the FSR variation has been undertaken within the section of this report

relating to Clause 4.6 of the MLEP. In summary, the applicant has adequately justified that compliance with the Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to contravene the development standard.

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

Description of non-compliance

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. If there is no prevailing building line, a 6m front setback applies. The proposed alterations and additions maintain the existing 2.9m front setback to the dwelling and 0.3m to the entrance stairs. As such, the prevailing building line at the front boundary is maintained and the proposal is compliant with this Control.

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. Additionally, for secondary street frontages, the side boundary setback control will apply unless a prevailing building line exists. In such cases the prevailing setback of the neighbouring properties must be used. This control also stipulates that any additional windows must be setback 3.0 metres from boundaries.

The subject site backs onto Smith Lane and Clause 4.1.4.2 (d) applies to the secondary street frontage.

The following setbacks to the semi-detached dwelling and are required and exhibited:

Northern setback

Boundary wall: 2.13m required (based on wall height) - 0m/ nil exhibited- variation of 100% (common wall)

Southern setback

Ground Floor: 1.17m required (based on wall height) - nil to 0.79m exhibited- max variation of 100%
First Floor: 1.93m required (based on wall height) - nil to 0.89m exhibited- max variation of 100%

Secondary street frontage

Prevailing setback or 2.13m required (based on wall height)- 6.3m exhibited/ no change- consistent with the prevailing building line

Window setback

The proposal results in the below non-compliant windows:

N: Common wall- N/A

S: 3 windows at 0.89m and 1 window at 0.7m exhibited- max variation of 77% (2.3m)

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 subject site adjoins Smith Lane at the rear and therefore, has been considered in regards to Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages.

Merit consideration:

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

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

Comment:

The proposal include minor works to the existing entrance stairs in the same location. No changes are proposed to the roof form or first floor to the immediate street front. There are no other proposed works to the existing front setback area and therefore, the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street will be maintained.

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 primarily retaining the existing built form and will not raise privacy concerns. The windows to the southern elevation are of a low or high sill design, with window W05 and being located to the internal staircase and passageway. Additionally, window W04 is small in design and located to the first floor bedroom 1 which is considered a low use area. Therefore, the proposal will not result in unreasonable privacy impacts. The proposal includes a increase to the rear of the first floor which results in minor increase in the overshadowing to 8 Smith Street from 12pm to 3pm. Therefore, there will be no significant increase in overshadowing and the development will providing equitable access to light, sunshine and air movement. The alterations and additions will facilitate view sharing and maintain adequate space between buildings to limit impacts on views and vistas from private and public spaces. As mentioned above, the dwelling will maintain the character to the streetscape and with consideration to the existing non-compliances, result in adequate space between buildings to create a rhythm or pattern of spaces. There are no changes to the existing traffic conditions.

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

Comment:

The proposed development is not expected to result in any unreasonable amenity impacts on adjoining properties and has demonstrated compliance with the underlying objectives of the controls where proposed non-compliance's arise. The proposed development allows for flexibility in the siting of the semi-detached dwelling side setbacks, without resulting in any unreasonable amenity impacts, as detailed above.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*

- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed works do not alter the existing landscaped areas and deep soil areas. The subject site does not adjoin or impact upon open space lands, National Parks or urban bushland.

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

Comment:

Not applicable. The subject site is not classified as bush fire prone land

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

4.1.5 Open Space and Landscaping

Description of non-compliance

4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area

The subject site is located within OS3 of the Open Space area map, which requires a total open space (TOS) area of 55% (75.24sqm) of the site area. The site requires a landscaped area of 35% (13.755sqm) of the total open space area and no more than 25% of TOS above ground.

The development results in a TOS of 28.7% (39.3sqm), a variation of the 47.7% to the requirement and a landscaped area of 10.2 (4sqm), a variation of 70.92% (9.755sqm) to the requirement. Additionally, the TOS above ground is measured at 16.8% (6.6sqm) and complies with the requirement.

It should be noted that the development does not result in any change to the TOS, landscaped area and TOS above ground. Therefore, the proposed development results in a technical non-compliance to the existing subject site and does not comply with the TOS and landscaped area.

It is considered that the existing non-compliant total open space can be considered reasonable, subject to the below merit assessment.

Merit consideration:

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

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

Comment:

The proposed development will retain the existing landscaped features and has been located and designed to ensure that the existing significant landscape features on site are retained.

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 development will not maintain the existing landscaped areas and includes the retention of the existing tree to the rear yard. It is considered that, subject to no change to the existing site landscaping, the maintenance of existing vegetation and bushland is enough to satisfy the objective.

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

Comment:

The development will have a minor increase to the existing sunlight access but, will not result in unreasonable overshadowing impacts. The privacy and views are maintained with this development. Thus, the proposal will have no unreasonable impact on the amenity of the site, streetscape and surrounding area.

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

Comment:

There is no change to the amount of soft landscaping provided on site. The existing water infiltration strategies and stormwater outlets will be retained. The proposal has been reviewed Council's Development Engineer and is supported, subject to conditions.

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. Existing wildlife corridors will be retained.

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)

For semi-detached dwelling houses, this Clause requires the provision of two (2) off-street parking spaces. The existing dwelling house provides one (1) off-street parking space approved under DA279/2016 and this arrangement is not proposed to be changed. It should be noted that a deferred commencement condition of consent applies to ensure the as built works (including the hardstand space) are addressed through a Building Information Certificate.

Whilst the proposal is numerically non-compliant with Schedule 3 of the MDCP 2013 that requires two (2) off-street parking spaces, the provision of an additional parking space on the subject site is not achievable within the existing context, nor expected in this instance considering the nature of the proposed alterations and additions, which do not propose any changes to parking arrangements or intensify the usage of the site. As this non-compliance is existing and unchanged, further merit assessment is not required, in this instance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of \$4,158 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$415,800.

CONCLUSION

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

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

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a semi-detached dwelling has been referred to the Development Determination Panel (DDP) due to a proposed variation of greater than 10% to the floor space ratio (FSR) development standard as established by Clause 4.4 Floor space ratio of the Manly Local Environmental Plan 2013.

There have been no concerns or objections raised by submissions during the assessment period.

The critical assessment issues of the proposed development include a variation to the FSR development standard, as well as side setback, total open space and landscaped area.

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

DEFERRED COMMENCEMENT APPROVAL

A. 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.

Accordingly Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Clause 76 of the Environmental Planning and Assessment Regulation 2021 to DA2024/1729 for Alterations and additions to a semi-detached dwelling on land at Lot B DP 437840, 10 Smith Street, MANLY, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

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.

DEFERRED COMMENCEMENT CONDITIONS

1. Deferred Commencement - Building Information Certificate for Unauthorised Works

An application for a Building Information Certificate is to be lodged and approved for the unauthorised structures before this consent can become operational.

Reason: To regularise unauthorised development.

Evidence required to satisfy these conditions must be submitted to Council (through the NSW Planning Portal) within two (2) years of the date of this consent, or the consent will lapse in accordance with the Environmental Planning and Assessment Regulation.

Applicants must submit a request for operational consent to Council via the NSW Planning Portal and upload all relevant documentation. This can be completed through accessing the relevant portal application ID and navigating to 'Request for Operational Consent' in the Actions dropdown menu.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

GENERAL CONDITIONS

2. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan

DA04	B	SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN	ACTION PLANS	04.02.2025
DA05	B	EXISTING GROUND FLOOR PLAN	ACTION PLANS	04.02.2025
DA06	B	EXISTING FIRST FLOOR PLAN	ACTION PLANS	04.02.2025
DA07	B	PROPOSED GROUND FLOOR PLAN	ACTION PLANS	04.02.2025
DA08	B	PROPOSED FIRST FLOOR PLAN	ACTION PLANS	04.02.2025
DA09	B	EAST/ WEST/ SOUTH ELEVATION	ACTION PLANS	04.02.2025
DA10	B	EAST/ WEST/ SOUTH SECTION	ACTION PLANS	04.02.2025
DA15	B	SAMPLE BOARD	ACTION PLANS	04.02.2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate (A1763979_02)	-	ACTION PLANS PTY LTD	09 December 2024
Stormwater Plans (DWG NO: D01, D02, D03)	A	NB Consulting Engineers	06.06.2024
Arborist Report	-	HUGH THE ARBORIST	16th November 2024
Waste Management Plan	-	Applicant	10/12/2024

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.

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	16/01/2025

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

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

4. 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 \$4,158.00 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 \$415,800.00.

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

Details demonstrating compliance, by way of written receipts issued by Council, are to be

submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

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

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

7. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. **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. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy. Stormwater shall be conveyed from the site to the existing kerb outlet.

Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with Council's policy are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

the development.

10. **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.

11. **Main roof ridge level**

The survey plan submitted with this application show the original roof ridge level as RL 12.30, however the architectural drawings are showing that the new metal roof meets with the main roof at RL 12.348, which must be below the original ridge level. This level at the adjoining buildings is RL 12.26 according to the survey plan and the new metal roof level should not be higher than the roof level of the adjacent semis to maintain the existing roof form along the group of semis when viewed from Smith Street and to ensure the new roof behind the main roof is not visible from the street.

Details demonstrating compliance with this condition should be submitted to Council's Heritage Advisor for approval prior to the issue of the Construction Certificate.

Reason: To ensure the significance of the conservation area is preserved.

12. **Compliance with Standards**

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

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

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

13. **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.

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

The approved plans must be submitted to the Sydney Water Tap in service, prior to works

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **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

16. **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.

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. 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 Transport for NSW 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.

20. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

21. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer.

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

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

22. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

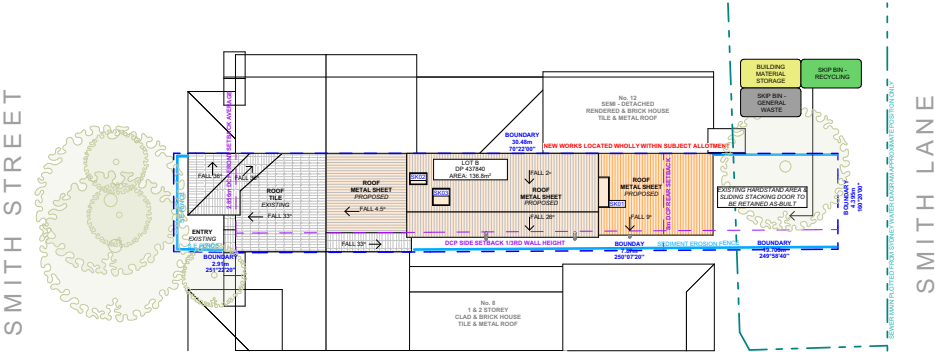
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

23. **Approved Works**

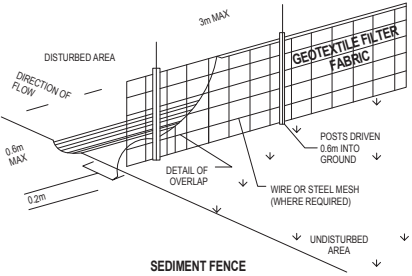
Nothing within this consent grants approval for works beyond the property boundaries of the subject site to which this development application applies.

Reason: To ensure all works are undertaken in accordance with this consent, and to ensure all works remain wholly within the property boundaries.

NOTE: SITE BOUNDARY IS TO BE IDENTIFIED BY A REGISTERED SURVEYOR AND CLEARLY MARKED ON SITE PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION WORKS.



SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN 1:200



NOTE: ALL DEMOLISHED ELEMENTS TO ENG. SPECIFICATIONS AND AS. 2601 - 2001

NOTE: SITE LOCATED ON MEDIUM RISK FLOOD PRONE LAND. PLANS TO BE READ IN CONJUNCTION WITH FLOOD RISK MANAGEMENT PLAN

NOTES REGARDING BOUNDARY
THE INFORMATION SHOWN ON THIS PLAN IS FOR DESIGN PURPOSES ONLY. THE POSITION OF BOUNDARY LINES HAVE BEEN ESTABLISHED BY A SURVEY TO MEET THE IDENTIFICATION REQUIREMENTS FOR COUNCIL AND NOT FOR REGISTRATION WITH THE LAND REGISTRATION SERVICES NSW NOR MAY THIS PLAN BE USED FOR ANY OTHER PURPOSE. SUBSEQUENT REGISTERED OR OTHER SURVEYS MAY AFFECT THE DEFINED BOUNDARY POSITIONS IN THIS AREA. ANY DIFFERENCES OF THIS NATURE ARE BEYOND THE PURPOSES OF THIS PLAN. THIS PLAN IS FOR THE ABOVE STATED PURPOSES ONLY. RESTRICTIONS ON THE TITLE HAVE NOT BEEN INVESTIGATED. IF FURTHER DEVELOPMENT IS CONTEMPLATED OR CONSTRUCTION INTENDED THEN IT IS IMPORTANT THAT A SURVEY SET OUT IS CARRIED OUT.

DUST CONTROL :
TO REDUCE DUST GENERATED BY WIND ACTION, THE REMOVAL OF THE TOP SOIL IS TO BE MINIMISED. TO PREVENT DUST GENERATION, WATERING DOWN OF THE SITE, ESPECIALLY DURING THE MOVEMENT OF MACHINERY IS REQUIRED. WHERE EXCAVATING INTO ROCK, KEEP THE SURFACE MOIST TO MINIMISE DUST. CONSTRUCT A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION PHASE UNTIL NEW LANDSCAPING IS PROVIDED OR REINSTATED. PREVENT DUST BY COVERING STOCKPILES.

SEDIMENT NOTE :
1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.
2. MINIMISE DISTURBED AREAS, REMOVE EXCESS SOIL FROM EXCAVATED AREA AS SOON AS POSSIBLE.
3. ALL MATERIAL STOCKPILE TO BE CLEAR FROM DRAINS, GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.
4. DRAINAGE TO BE CONNECTED TO STORMWATER AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.
5. ROADS AND FOOTPATHS TO BE SWEEP DAILY.

STOCKPILES :
ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.
ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE IF POSSIBLE. PLACE WATERPROOF COVERING OVER STOCKPILES.
IF REQUIRED PROVIDE DIVERSION DRAIN & BANK AROUND STOCKPILES.

GUTTER PROTECTION :
PROVIDE PROTECTION TO DOWNHILL GRATE IN GUTTER BY MEANS OF SAND BAGS OR BLUE METAL WRAPPED IN GEOTEXTILE FABRIC. WHEN SOIL OR SAND BUILDS UP AROUND THIS SEDIMENT BARRIER, THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.

NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH EXISTING



ACTION PLANS

m: 0426 957 518
e: operations@actionplans.com.au
w: www.actionplans.com.au

REV.	DATE	COMMENTS	DRWN
A	11.10.2024	DEVELOPMENT APPLICATION	CA
B	04.02.2025	REV B	AP

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The Builder/contractor/owner is to ensure that the approved boundary setbacks and approved levels are confirmed and set out by a registered Surveyor prior to construction, the boundary setbacks take precedence over all other dimensions. The Builder/contractor shall check and verify ALL dimensions on site prior to commencement of any work, creation of shop drawings, or fabrication of components.
All errors and omissions are to be verified by the Builder/contractor/owner and referred to the designer prior to the commencement of works.

LEGEND	
	EXISTING
	DEMOLISHED
	METAL ROOFING
	TILED ROOFING
	TIMBER STUD
	TILED FLOOR
	TIMBER FLOOR
	BRICKWORK

CLIENT
JILL TUNBRIDGE

PROJECT ADDRESS
10 SMITH STREET
MANLY 2095

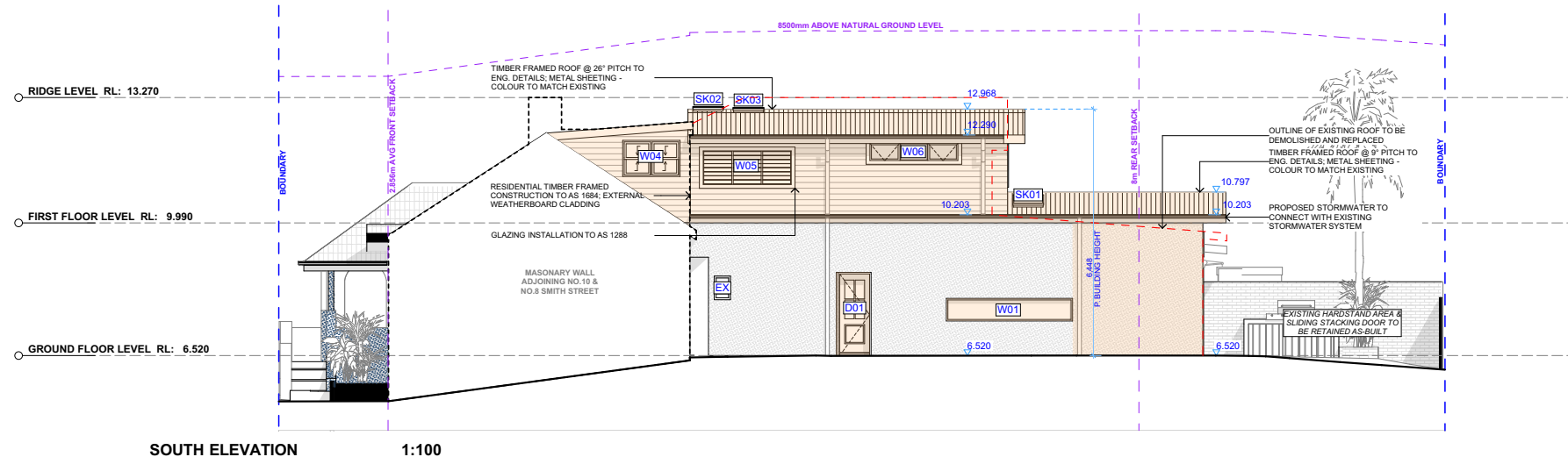
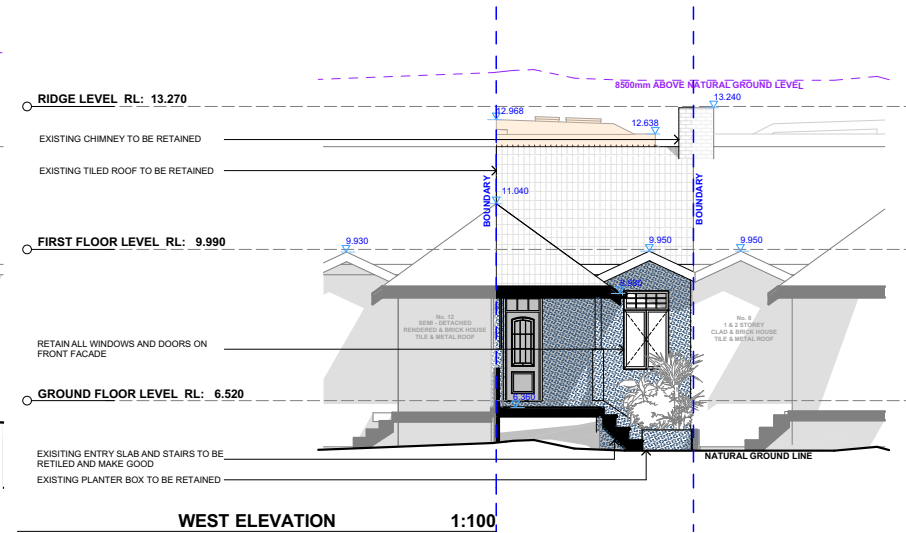
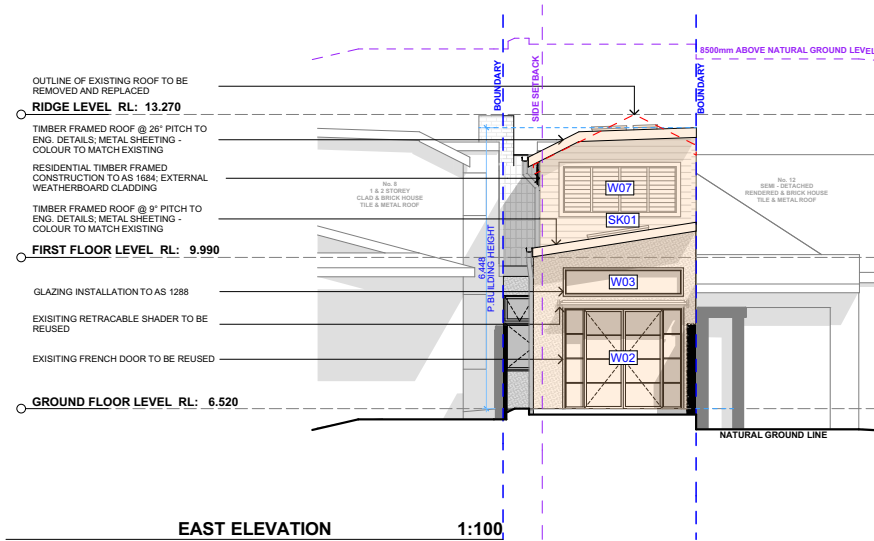
DRAWING NO.
DA04

DATE
Tuesday, 4 February
2025

DRAWING NAME
SITE / ROOF / SEDIMENT
EROSION / WASTE
MANAGEMENT / STORMWATER
CONCEPT PLAN
SCALE
1:200 @A3



ATTACHMENT 2 : SITE PLAN AND ELEVATIONS - ITEM 3.1 - DEVELOPMENT DETERMINATION PANEL - 12 MARCH 2025



ACTION PLANS

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w: www.actionplans.com.au

REV.	DATE	COMMENTS	DRWN
A	11.10.2024	DEVELOPMENT APPLICATION	CA
B	04.02.2025	REV B	AP

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The Builder/contractor shall check and verify ALL dimensions on site prior to commencement of any work, creation of shop drawings, or fabrication of components.

All errors and omissions are to be verified by the Builder/contractor and referred to the designer prior to the commencement of works.

LEGEND

	METAL ROOFING		EXISTING
	TILED ROOFING		
	TIMBER CLAD		
	BRICKWORK		
	CONCRETE		

CLIENT
JILL TUNBRIDGE

PROJECT ADDRESS
10 SMITH STREET
MANLY 2095

DRAWING NO.
DA09

DATE
Tuesday, 4 February
2025

DRAWING NAME
EAST / WEST / SOUTH
ELEVATION

SCALE
1:100 @A3



**WRITTEN REQUEST PURSUANT TO
CLAUSE 4.6 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

**VARIATION OF A DEVELOPMENT
STANDARD REGARDING THE MAXIMUM
FLOOR SPACE RATIO AS DETAILED IN
CLAUSE 4.4 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

**Alterations and Additions to Existing
Semi-Detached Dwelling and Associated
Works**

**10 Smith Street,
Manly NSW 2095**

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☎ 0425232018

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PO Box 361, Balgowlah NSW 2093

Alterations and Additions to Existing Semi-Detached Dwelling and Associated Works

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:

Jill Tunbridge

5 February 2025

Disclaimer

This report has been prepared with due care and thoroughness by Four Towns Pty Ltd. The statements and opinions are given in good faith and in confidence that they are accurate and not misleading. In preparing this document, Four Towns Pty Ltd has relied upon information and documents provided by the Client or prepared by other Consultants. Four Towns Pty Ltd does not accept responsibility for any errors or omissions in any of the material provided by other parties.

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Alterations and Additions to Existing Semi-Detached Dwelling and Associated Works

1. Introduction

The nature and extent of the contravention is as follows:

Requirement	0.6:1 82.08sqm
Existing	0.821:1 112.33sqm
Proposed	0.824:1 112.74sqm
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	37.35%

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 R1 – General Density Residential (the R1 zone) and the Land Use Table in Part 2 of MLEP 2013 specifies the following objectives for the R1 zone:

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

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

Comment: The proposed development retains the existing use of the site which provides a variety of housing types in the 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*

Alterations and Additions to Existing Semi-Detached Dwelling and Associated Works

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 0.6:1, 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. In part, the variation is acceptable on the basis of the Control 4.1.3 within MDCP. 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.

Alterations and Additions to Existing Semi-Detached Dwelling and Associated Works

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) has been repealed. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of the MLEP2013 from the operation of clause 4.6.

3. Relevant Caselaw

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.*

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

1. Is clause 4.4 of MLEP2013 a development standard?
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

Alterations and Additions to Existing Semi-Detached Dwelling and Associated Works

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 residential development.

The site has a maximum FSR provision of 0.6:1 (82.08sqm). It has been determined that the proposal, results in a total gross floor area on the site of 112.74sqm. This represents a floor space ratio of 0.824:1 and therefore a non-compliance with the FSR standard by 30.66sqm or 37.35%.

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

The Lot size map identifies the subject site as being in sub zone "C" in which a minimum lot size of 250sqm is required. The site having an area of only 136.8sqm is well below the minimum lot size provision and accordingly the clause 4.1.3 Manly DCP FSR variation provisions apply.

Clause 4.1.3.1 states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 of the LEP is to be no greater than the achievable gross floor area for the lot indicated in Figure 30 of the DCP. We confirm that pursuant to Figure 30 the calculation of FSR is to be based on a site area of 250sqm with an achievable gross floor area of 150sqm.

In this regard, the 112.74sqm of gross floor area proposed, representing an FSR of 0.451:1 (based on 250sqm), is well below the maximum prescribed gross floor area of 150sqm and as such complies with the DCP variation provision. We note that such provision contains the following note:

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

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

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

A review of the objectives of Clause 4.4 (and also Manly DCP 4.1.3.1) has been undertaken below:

Alterations and Additions to Existing Semi-Detached Dwelling and Associated Works

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

The objective of Clause 4.4 (1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development. The surrounding area varies in size, bulk and scale, ranging from one to two storeys in height and varying setbacks.

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 Smith 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.

This objective is achieved as the bulk and scale of development is entirely consistent with the existing and desired streetscape character.

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

Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 112.74sqm of gross floor area proposed, representing an FSR of 0.451:1 (based on 250sqm), this is below the maximum prescribed gross floor area of 150sqm and as such complies with the DCP variation provision applicable to undersized allotments. We note that Objective 1 of the DCP provision, which relates to establishing building density and bulk, as reflected by FSR, in relation to site area (undersized allotments) is similar to this LEP objective namely:

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

As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with this objective. It is further noted, this was applied for and accepted in 2016 under DA279/2016 which approved a GFA of 110.9sqm (0.81:1).

Neither the LEP nor DCP identify any important landscape or townscape features either on or within proximity of the subject site. My own observations did not identify any landscape or townscape features that I would consider important in terms of their visual significance.

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

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

The proposal enhances the existing visual relationship acknowledging the alterations and additions will enhance the existing dwelling on the site. The proposal has been designed to the desired character of the area while creating its own "image" and "identity for the area". The proposal is consistent with the height, bulk and scale of existing dwellings along Smith Street, noting the one to two storey nature of the streetscape.

It is noted that this objective is the same as the primary purpose/objective outlined at clause 4.1.3 of the DCP as confirmed in the note such provision namely:

Alterations and Additions to Existing Semi-Detached Dwelling and Associated Works

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

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

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

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also “deemed to comply” with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an appropriate visual relationships between new development and the existing character and landscape of an area. That said, it has previously been determined that the proposal achieves objective (a) of the clause 4.4 MLEP FSR standard namely to ensure the bulk and scale of development is consistent with the existing and desired streetscape character. Accordingly, I am satisfied that the development, notwithstanding the FSR non-compliance, maintains an appropriate visual relationship between new development and the existing built form character of the area.

In relation to landscape character, the application does not require the removal of any significant trees or vegetation with a building footprint maintained which does not change the total open space and landscaped area MDCP controls from that existing. An appropriate visual relationship between new development and the existing landscape of the area is maintained.

I am satisfied that the development, notwithstanding its FSR non-compliance, achieves the objective as it maintains an appropriate visual relationship between new development and the existing character and landscape of the area.

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

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 footprint which ensures the amenity and privacy of adjoining properties is maintained.

Privacy

Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 112.74sqm of gross floor area proposed, representing an FSR of 0.451:1 (based on 250sqm), this is below the maximum prescribed gross floor area of 150sqm and as such complies with the DCP variation provision applicable to undersized allotments. We note that the privacy objectives at clause 3.4.2 are also referenced in relation to these provisions namely:

See also objectives for privacy at paragraph 3.4.2 of this plan.

3.4.2 Privacy and Security

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

Alterations and Additions to Existing Semi-Detached Dwelling and Associated Works

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

As previously indicated, the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with the clause 3.4.2 privacy objectives to the extent that it can be demonstrated that the development minimises loss of privacy to adjacent and nearby development.

Given adequate spatial separation is maintained between the balance of surrounding properties, and the primary orientation of living areas on the ground floor to the east, 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 DA12 to DA14 demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impact to the primary living and open space areas of the adjoining residential properties with compliant levels of solar access maintained.

Visual amenity/ building bulk and scale

As indicated in response to objective (a), I have formed the considered opinion that the bulk and scale of the building is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes.

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.

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.

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 Smith Street.

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:

Previous Development Consent and Manly Development Control Plan – Control 4.1.3

- The site is the subject of DA279/2016 which approved FSR 0.81:1 (110.9sqm) through the provisions of Manly DCP Control 4.1.3.
- The assessment and approval granted proved there are reasonable environmental planning grounds to warrant a variation in this instance.
- The proposal for majority retains the footprint and envelope as approved under DA279/2016, albeit with minor design changes to accommodate the owner of the site.

Context

- The area surrounding the subject site is characterised by 1 to 2 storor dwellings, with varying front and rear setbacks.
- 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 to the first floor which is consistent with the approval under DA279/2016.
- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:
 - DA2022/0741 – 15 Carlton St Manly – 0.84:1 – 39.44% 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.
- 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,

Alterations and Additions to Existing Semi-Detached Dwelling and Associated Works

- The minor increase to the floor area of 30.84sqm 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 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 Cl 1.3(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,*

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- (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 3.2 DA2024/0715 - 11 TAYLOR STREET NORTH CURL CURL -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING A 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 DA2024/0715 for alterations and additions to a dwelling house including a swimming pool on land at Lot 22 DP 1040941, 11 Taylor Street NORTH CURL CURL, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2025/146762
Attachments	1 Assessment Report 2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0715
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Responsible Officer:	Michael French
Land to be developed (Address):	Lot 22 DP 1040941, 11 Taylor Street NORTH CURL CURL NSW 2099
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Matthew Karl Olsson

Application Lodged:	13/06/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	17/07/2024 to 31/07/2024
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 610,500.00
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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 the receipt of greater than five (5) submissions.

The objections raised predominantly concern non-compliance with built form controls and the impact of the proposal on view loss.

The proposal includes several variations to the built form controls under the Warringah Development Control Plan, these being; *Clause B1 Wall height, Clause B7 Front Boundary Setbacks, Clause B9 Rear Boundary Setbacks and Clause D1 Landscaped Open Space (LOS) and Bushland Setting*. The proposal in regard to these variations do not result in unacceptable environment and/or amenity impacts, with the development achieving the relevant objectives.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. Nine (9) submissions were received.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal (as amended) is a suitable and an acceptable development for the subject site for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the following:

Lower Ground Floor

- Reconfiguration of internal staircase.

Ground Floor

- Reconfiguration of internal staircase.
- Extension to the floorplate to provide for an open plan kitchen, living and dining room, sitting room, bedroom and bathroom.
- Alterations to the window and door schedule.

First Floor

- Addition of a first floor that consists of a bedroom, wardrobe and ensuite, with a terrace to the south.

External Works

- Addition of a rainwater tank to the eastern side of the dwelling.
- Addition of a plunge pool in the rear yard.
- Addition of a spa and external lounge.
- Extension of the balcony to the south of the dwelling.
- Addition of a skillion roof.

*A Request for Further Information letter, dated 29 August 2024, was issued to the applicant to address concerns regarding built form control non-compliances and view loss. The amended proposal includes revised architectural plans that resolve the rear setback concern by ensuring first-floor compliance, reduce the overall footprint of the upper-level addition, and incorporate additional privacy screening measures. It also included a Visual Impact Assessment and an updated BASIX Certificate. The amendments are considered to appropriately address the identified concerns, and therefore the amended proposal is considered supportable in this instance. Furthermore, the application was not required to be renotified under the Northern Beaches Community Participation Plan (CPP), as the proposed modifications did not trigger the need for renotification.

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

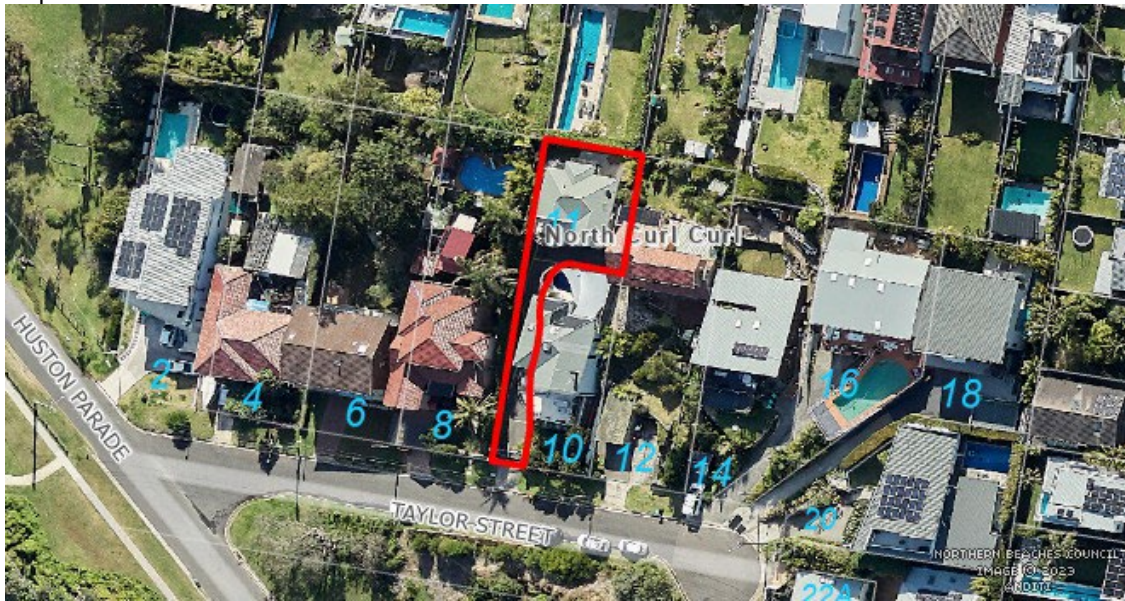
Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 22 DP 1040941 , 11 Taylor Street NORTH CURL CURL NSW 2099
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Taylor Street . The site is a battle-axe allotment with a frontage of 4.99m along Taylor Street and a maximum depth of 50.29m. The site has a surveyed area of 416.2m². The site is located within the R2 Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011 and accommodates a two (2) storey residential dwelling. The site has a downward slope toward the south-west corner of the site, experiencing a cross-fall of approximately 10m. There are no details of any known threatened species on

	site.
	Detailed Description of Adjoining/Surrounding Development
	Adjoining and surrounding development is characterised by a mix of dwellings within an R2 Low Density Residential zone.

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:

DA98/291: A Development Application was lodged with Warringah Council for a detached dual occupancy. This application was approved on 25 September 1998.

No. 177BA: A Building Application was submitted to Warringah Council for the construction of two (2) new dwellings. This application was approved on 30 March 1999.

DA2001/682: A Development Application was lodged with Warringah Council for the subdivision of one lot into two. This application was approved on 7 August 2001, and the subdivision certificate was issued on 31 October 2001.

CDC2017/0397: A Complying Development Certificate (CDC) was submitted to Council for external alterations to an existing dwelling, including the addition of a new privacy screen at 11 Taylor Street, North Curl Curl. A Notice of Commencement (NOC2017/0555) was also submitted for these works.

DA2022/0798: A Development Application for alterations and additions to a dwelling, including a swimming pool, was withdrawn on 13 March 2023. Prior to the withdrawal of the application, the application was to be reviewed by the Northern Beaches Local Planning Panel (NBLPP) under the recommendation that the proposal be refused.

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)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended Architectural Plans to address concerns raised, particularly in relation to view loss. The proposal as amended is considered supportable in this instance. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 17/07/2024 to 31/07/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 10 submission/s from:

Name:	Address:
Withheld	BALGOWLAH NSW 2093
Mr Tony Joseph Bonanno Mrs Susan Margaret Bonanno	15 Pitt Road NORTH CURL CURL NSW 2099
Mr Matthew James Clymer Mrs Cheryl Maria Clymer	19 Pitt Road NORTH CURL CURL NSW 2099
David Harrison	17 Pitt Road NORTH CURL CURL NSW 2099
Mr John Carlos O'gorman	20 Pitt Road NORTH CURL CURL NSW 2099
Mr John Peter McLoughlin Ms Kim Michelle Shelley	7 Pitt Road NORTH CURL CURL NSW 2099
Squillace Architects Haydon James Bray Mrs Kerry Louise Bray Shaw Reynolds Lawyers Ryan Bray Hawes And Swan Planning	13 Pitt Road NORTH CURL CURL NSW 2099

Name:	Address:
Pty Ltd The Planning Hub Urban Legal	
Peter Thomas Sulyan Chen Hong Bian Kyle Huang	12 Taylor Street NORTH CURL CURL NSW 2099

The following issues were raised in the submissions:

- *Zone R2 Low Density Residential*
- *Clause 4.3 Height of Buildings* (Warringah Local Environmental Plan 2011)
- *Clause A.5 Objectives*
- *Clause B1 Wall Heights* (Warringah Development Control Plan)
- *Clause B3 Side Boundary Envelope* (Warringah Development Control Plan)
- *Clause B7 Front Boundary Setbacks* (Warringah Development Control Plan)
- *Clause B9 Rear Boundary Setbacks* (Warringah Development Control Plan)
- *Clause D1 Landscaped Open Space and Bushland Setting* (Warringah Development Control Plan)
- *Clause D2 Private Open Space* (Warringah Development Control Plan)
- *Clause D6 Access to Sunlight* (Warringah Development Control Plan)
- *Clause D7 Views* (Warringah Development Control Plan)
- *Clause D8 Privacy* (Warringah Development Control Plan)
- *Clause D9 Building Bulk* (Warringah Development Control Plan)
- Comments in previous applications
- Views from the streetscape
- Inaccuracies in the Statement of Environmental Effects (SEE)
- Cumulative impacts of non-compliances
- Visual Impact Assessment

The above issues are addressed as follows:

- ***Zone R2 Low Density Residential***

The submissions raised concerns that the proposal contradicts the objectives of the R2 Low Density Residential zone.

Comment:

Assessment against *Zone R2 Low Density Residential* is detailed elsewhere within this report. The proposal is supportable in this regard.

- ***Clause 4.3 Height of Buildings (Warringah Local Environmental Plan 2011)***

The submissions raised concerns about the accuracy of the detailed maximum height of works, citing difficulties in identifying the natural ground level due to previous works. It is also noted that the proposed building height may be non-compliant, potentially necessitating a Clause 4.6 Variation Request. Additionally, concerns were raised about the absence of a 3D height plane to illustrate the building's height. The submissions citing that the lack of details is considered

insufficient for a comprehensive assessment.

Comment:

The provided documentation is considered sufficient to accurately determine the proposed maximum height of the development. The sections and survey plan clearly demonstrate compliance with the maximum height requirements. The RLs shown on the plans are consistent with those on the survey plan. As a result, a Clause 4.6 Variation Request and/or any further supporting information was not required and therefore not requested. The proposal is compliant and supportable in this regard.

- **Clause A.5 Objectives**

The submissions raised concerns that the proposal does not meet the objectives stipulated within this clause.

Comment:

The proposal is considered to align with the overall objectives of the plan. An assessment of the relevant clauses supporting these objectives is provided in this report. The proposal is supportable in this regard.

- **Clause B1 Wall Heights (Warringah Development Control Plan)**

The submissions raised concerns regarding the numerical non-compliance with the requirements of this clause.

Comment:

Assessment against *Clause B1 Wall Heights* is detailed elsewhere within this report. The proposal is supportable in this regard.

- **Clause B3 Side Boundary Envelope (Warringah Development Control Plan)**

The submissions raised concerns regarding the proposed building envelope.

Comment:

The proposal is compliant with the requirements of *Clause B3 Side Boundary Envelope*. Therefore no further assessment is required, and the proposal is supportable in this regard.

- **Clause B7 Front Boundary Setbacks (Warringah Development Control Plan)**

The submissions raised concerns regarding the numerical non-compliance with the requirements of this clause.

Comment:

Assessment against *Clause B7 Front Boundary Setbacks* is detailed elsewhere within this report. The proposal is supportable in this regard.

- **Clause B9 Rear Boundary Setbacks (Warringah Development Control Plan)**

The submissions raised concerns regarding the numerical non-compliance with the requirements of this clause.

Comment:

Assessment against *Clause B9 Rear Boundary Setbacks* is detailed elsewhere within this

report. The proposal is supportable in this regard.

- **Clause D1 Landscaped Open Space and Bushland Setting (Warringah Development Control Plan)**

The submissions raised concerns regarding the numerical non-compliance with the requirements of this clause.

Comment:

Assessment against *Clause D1 Landscaped Open Space and Bushland Setting* is detailed elsewhere within this report. The proposal is supportable in this regard.

- **Clause D2 Private Open Space (Warringah Development Control Plan)**

The submissions raised concerns regarding the non-compliance with the requirements of this clause.

Comment:

The proposal is compliant with the requirements of *Clause D2 Private Open Space*. Therefore no further assessment is required, and the proposal is supportable in this regard.

- **Clause D6 Access to Sunlight (Warringah Development Control Plan)**

The submissions raised concerns regarding overshadowing impacts.

Comment:

The proposal is compliant with the requirements of *Clause D6 Access to Sunlight*. Therefore no further assessment is required, and the proposal is supportable in this regard.

- **Clause D7 Views (Warringah Development Control Plan)**

The submissions raised concerns regarding view loss.

Comment:

Assessment against *Clause D7 Views* is detailed elsewhere within this report. The proposal is supportable in this regard.

- **Clause D8 Privacy (Warringah Development Control Plan)**

The submissions raised concerns regarding potential privacy impacts on neighboring properties.

Comment:

8 Taylor Street: Window W9 on the first floor is west-facing and fitted with privacy louvres, minimising views toward the western side boundary. Given the site's topography and the separation distance of over 7m, any potential privacy impacts are considered minimal and acceptable within a residential setting.

10 Taylor Street: The balcony facing this property is significantly elevated above the dwelling. Any overlooking from the balcony is generally limited to the roof and shade sail above the inground pool, which does not unreasonably impact private living areas. Furthermore, the purpose of this balcony is to obtain views over this site. The privacy impact is considered supportable in this instance.

12 Taylor Street: No windows are proposed along the eastern elevation that would cause

unreasonable privacy impacts. Concerns about overlooking from the south-facing first-floor balcony have been addressed via privacy screening along the eastern elevation. The design, height, and southern extension of the privacy screen effectively mitigate any unreasonable overlooking.

11 Pitt Road: There is a significant distance between the dwelling/private open space on this site and the proposed development. Additionally, the north-facing first-floor windows are fitted with privacy louvres, preventing unreasonable overlooking into the rear yard.

13 Pitt Road: A substantial distance separates this dwelling from the proposed development. Furthermore, the north-facing first-floor windows have privacy louvres to mitigate any unreasonable overlooking impacts on the rear yard.

15 Pitt Road: There is a considerable separation between this dwelling and the proposed development. Privacy louvres on the north-facing first-floor windows effectively screen views, ensuring no unreasonable overlooking of the rear yard.

17 Pitt Road: This dwelling is significantly distanced from the proposed development. The north-facing first-floor windows are equipped with privacy louvres, effectively preventing unreasonable overlooking into the rear yard.

- **Clause D9 Building Bulk (Warringah Development Control Plan)**

The submissions raised concerns that the development would be visually dominant and imposing. Specifically, objectors argued that the proposed building would appear unreasonably large given the small size of the allotment and that adding an extra storey would be inappropriate. There were also concerns that the development would not be consistent with the established scale of surrounding properties.

Comment:

The proposed dwelling complies with the requirements of *Clause D9 Building Bulk*. Although the site is undersized, the design and dimensions of the proposed works appropriately responds to this constraint. Furthermore, the proposal adheres to the applicable development standards. Given this, the development is considered acceptable and supportable as proposed.

- **Comments in previous applications**

The submissions referenced comments and assessment from previous applications, arguing that similar considerations should apply in this instance.

Comment:

The concerns raised in previous applications are specific to those cases and do not set a binding precedent. This application is assessed independently based on the relevant planning controls and their application to the current proposal.

- **Views from the streetscape**

The submissions raised concerns that the proposal would result in an inappropriate development from a streetscape perspective.

Comment:

The underlying built form controls and their current application maintain the proposals consistency with the character of the area. As a battle axe allotment, the site is visible from the street below; however, due to its positioning and the overall design, the impact on the

streetscape is minimal and does not result in any significant visual intrusion. The proposal is considered supportable as it integrates adequately with the surrounding environment and maintains the desired amenity of the area.

- **Inaccuracies in the Statement of Environmental Effects (SEE)**

The submissions raised concerns regarding comments within the Statement of Environmental Effects (SEE).

Comment:

The Statement of Environmental Effects (SEE) has sufficiently addressed the relevant requirements. Any specific comments made in the SEE regarding the assessment of the application are not directly relevant, as an independent, comprehensive assessment has been undertaken. The SEE provided the necessary information to support Council's detailed assessment.

- **Cumulative impacts of non-compliances**

The submissions raised concerns that the cumulative impact of the non-compliances would result in unacceptable effects on neighboring properties.

Comment:

The cumulative impacts of the proposed non-compliances have been assessed in accordance with the relevant provisions of the Warringah Local Environmental Plan 2011 and Warringah Development Control Plan. The assessment concluded that the proposal, despite the identified non-compliances, will not result in unacceptable impacts on adjoining sites. Therefore, the proposal is considered supportable in this instance.

- **Visual Impact Assessment**

The submissions raised concerns about inaccuracies in the Visual Impact Assessment provided by the applicant. Specifically, it was noted that the images were captured using drones without supporting evidence, and that the viewpoints did not accurately reflect the correct perspectives from the relevant rooms.

Comment:

The use of height poles is not mandatory and the concerns raised in the submissions were carefully considered. It is noted that the applicant provided enough information to allow for an accurate assessment of the proposal. Despite the noted inaccuracies, the image overlays and assessment of the proposed dwelling were still deemed sufficient to assess the potential view loss impact. A thorough evaluation was conducted in line with the relevant clause and objectives related to view loss, following the court's established guidelines. Based on this assessment, the proposal is considered supportable, as further detailed in this report.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The handle of the site which consists predominately of the driveway is mapped under Warringah Development Control Plan as forming part of a Wildlife Corridor. However the proposed development will

Internal Referral Body	Comments
	not result in the modification of native vegetation, the drive does not form part of a significant wildlife corridor within the locality, and changes to the driveway and existing landscape plantings is not proposed.
NECC (Riparian Lands and Creeks)	This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. This proposal is supported. Details below. Riparian The site is located near Curl Curl Lagoon and as such proposed development must not significantly impact on the biophysical, hydrological or ecological integrity of the receiving waterway 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. <i>Planners note: The recommended condition has not been adopted verbatim but has been incorporated into the conditions of consent.</i>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

application hereunder.

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No.A1770787_02 dated 31 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.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment**Zone R2 Low Density Residential****Objectives of zone**

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

Comment:

The proposal enhances the amenity of the subject site while maintaining a dwelling that is similar in size and scope to surrounding properties, ensuring compatibility within the low-density residential environment.

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

Comment:

The proposal retains the existing land use, with improvements that enhance the daily living experience of the owners, contributing to the overall functionality of the site.

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

Comment:

The proposal preserves the harmony with the existing landscape setting and natural environment of Warringah, ensuring minimal disruption to the local character and natural surroundings.

Warringah Development Control PlanBuilt Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	5.3m (west) 8.4m (east)	16.7%	No
B3 Side Boundary Envelope	5m (west)	within envelope	N/A	Yes
	5m (east)	within envelope	N/A	Yes

B5 Side Boundary Setbacks	0.9m (west)	1m	N/A	Yes
	0.9m (east)	2m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	3.4m (balcony) >6.5m (Taylor Street frontage)	47.7%	No
B9 Rear Boundary Setbacks	6m	1.5m (pool) 3.1m (dwelling) 6m (first floor addition)	75%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	existing- 4.3% (18.1m ²) proposed- 2.2% (9.2m ²)	97.8%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	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	No	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
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

Clause B1 Wall Heights requires that walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).

The proposal details a first floor addition.

The proposal presents a maximum 8.4m wall height along the eastern elevation, causing a 16.7% variation.

The natural slope of the land and the irregular shape of the allotment contribute to this non-compliance. Modifying the first floor to step to the west in order to address this issue would result in an unreasonable view loss impact. It is also important to note that the proposal complies with the Height of Buildings Development Standard, and the side setbacks exceed the requirements of the DCP. Given these factors, the proposed wall heights are considered acceptable and align with the underlying objectives of the DCP, as outlined below.

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 additions are not considered to cause a significant, adverse visual impact from adjoining properties, streets, waterways and land zoned for public recreation purposes. There is considered to be adequate space between the first floor addition and the adjoining property and streets, with no adjacent waterways or public recreation areas.

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

Comment:

The proposed development is considered to be below the existing tree canopy level.

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

Comment:

The proposal is not considered to result in any unreasonable view loss impacts from surrounding/adjacent properties or from the public domain. Assessment against *Clause D7 Views* is detailed elsewhere within this report.

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

Comment:

The wall height non-compliance is not considered to have an unreasonable impact on adjoining or nearby properties. The proposed development is adequately distanced from any neighboring built form.

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

Comment:

The development is considered to adequately respond to site topography. The first floor addition will not require any excavation.

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

Comment:

The proposed roof form of the dwelling house is deemed to be consistent with the surrounding urban environment.

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.

B7 Front Boundary Setbacks

Description of non-compliance

Clause B7 Front Boundary Setbacks (Warringah Development Control Plan) requires that built structures are setback a minimum 6.5m from the front boundary or the established building line, whichever is greater. Permissible built structures within the front setback include driveways, fences and retaining walls.

The proposal details the dwelling within the front setback area, the balcony located 3.4m from the front boundary line.

The proposal presents 3.4m setback, causing a 47.7% variation.

It should be noted that the site is a battle-axe allotment of limited dimensions. Furthermore, the proposed works within the front setback is considered to have a negligible impact upon the streetscape character, and adjacent and surrounding dwellings, and therefore strict compliance with the requirements of this clause is not necessary in this instance. In this regard, assessment against the objectives of this clause is conducted below.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The proposal is considered to maintain the sense of openness within the front yard.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The height, bulk and scale of the dwelling as proposed is considered to maintain the visual continuity and pattern of buildings and landscape elements.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The works within the front setback area are considered to protect and enhance the visual quality of streetscapes and public spaces.

- *To achieve reasonable view sharing.*

Comment:

The proposal is considered to achieve reasonable view sharing. Further assessment is detailed elsewhere within this report.

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

B9 Rear Boundary Setbacks

Description of non-compliance

Clause B9 Rear Boundary Setbacks requires that built structures are setback a minimum 6m from the rear boundary.

The proposal details a pool and works to the dwelling within the rear setback area.

The proposal presents a 1.5m setback, causing a 75% variation.

Exception to the subject Clause can be made;

On land zoned R2 Low Density Residential, where the minimum rear building setback is 6 metres, exempt development, swimming pools and outbuildings that, in total, do not exceed 50% of the rear setback area, provided that the objectives of this provision are met.

In this instance the proposed works within the rear setback area accommodates less than 50% of the rear setback area.

It should be noted that the dwelling setback remains as existing and the first floor addition is compliant with the requirements of this clause. Furthermore, given the aforementioned exception, the proposed location of the pool is reasonable in its context, and strict compliance with the requirements of this clause is not necessary in this instance. In this regard, assessment against the objectives of this clause is conducted below:

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

The proposal retains sufficient dimensions around the pool for deep soil landscaping to the rear of the site.

- *To create a sense of openness in rear yards.*

Comment:

Notwithstanding the swimming pool's encroachment into the rear setback area, the area is free of any structures, creating an adequate sense of openness in the rear yard.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The amenity of adjacent land, including privacy between buildings will not be adversely affected by the encroachment into the rear setback area.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The surrounding area is characterised by similar recreational structures located in the rear of the site, thereby maintaining the existing visual continuity and pattern of buildings, rear gardens and landscape elements.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

Privacy between dwellings will continue to be provided. Further comments are provided in the submission section.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

Clause D1 Landscape Open Space and Bushland Setting requires that the total soft landscaped area shall total 40% of the site area.

The proposed works provide for a Landscape Open Space calculation of 2.2% (9.2m²), a variation of 97.8%.

This is a reduction from the existing calculation of 4.3% (18.1m²).

The reduction in Landscaped Open Space, as defined by the DCP, is due to the requirement that any area counted towards this calculation must have a minimum dimension of two (2) metres. Given the site's shape and dimensions, it is not achievable to maintain or increase the Landscaped Open Space calculation with the addition of the pool. However, the proposal results in a decrease in hard surface area on the site, which contributes positively to stormwater management, amenity and enhances the overall landscape character. Importantly, the decrease in Landscaped Open Space is minor and does not compromise the intent of the control. The proposal maintains sufficient open space for recreational use and visual amenity, and the dimensions of the landscaped area around the pool is sufficient for the planting of certain forms of vegetation. For these reasons, the minor variation to the clause is considered acceptable, as the proposal achieves the intended outcomes of this control, as outlined below.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The development will maintain adequate space for the introduction of planting. The decrease in Landscaped Open Space is limited to the rear of the site.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The proposal is considered to adequately conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

Given the site's dimensions and the existing shortage of Landscaped Open Space, opportunities for vegetation planting are limited. However, the proposed alteration to the landscapable area is minimal and will not unreasonably restrict planting.

- *To enhance privacy between buildings.*

Comment:

The proposal is not considered to unreasonably adversely effect privacy to or from the subject site.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The development will maintain the adequate landscaped area to accommodate for the recreational needs of the occupants.

- *To provide space for service functions, including clothes drying.*

Comment:

Service functions will not be impacted.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

Water management will be managed in accordance with the proposed stormwater management plan. The infiltration of water is not anticipated to be adversely affected.

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

D7 Views

In response to concerns related to view loss resulting from the proposed addition, a site inspection to

the adjoining sites at 15 Pitt Road, North Curl Curl and 13 Pitt Road, North Curl Curl, was conducted on 12 December 2024. Height poles were not installed in this instance as per the applicants choice. Tenacity Consulting v Warringah Council [2004] NSWLEC 140 implicitly supports the use of alternative methods like Visual Impact Assessments if they provide a clear and reliable representation of the development's impact on views. It is considered in this case that this has been achieved. It is acknowledged that there will be some impact on views from other adjoining and surrounding sites. However, the location of these dwellings ensures that view sharing will be achieved and that any view loss would be classified as negligible. As a result, no request was made to the owners of these properties to conduct a view loss inspection.



15 Pitt Road- Dining Area (standing)



15 Pitt Road- Dining Area (seated)



15 Pitt Road- Kitchen (standing)



15 Pitt Road- Rear Balcony eastern side (standing)



15 Pitt Road- Rear Balcony (seated)



15 Pitt Road- Rear Balcony western side (standing)



15 Pitt Road- Lounge Room (standing)



15 Pitt Road- Lounge Room (seated)



13 Pitt Road- Kitchen (seated)



13 Pitt Road- Kitchen (seated)



13 Pitt Road- Lounge Room (seated)



13 Pitt Road- Rear Deck seating area (seated)



13 Pitt Road- Rear Deck eastern side (standing)



13 Pitt Road- Rear Deck western side (standing)



13 Pitt Road- First Floor Bedroom (standing)

Merit consideration

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

- *To allow for the reasonable sharing of views.*

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

The view corridors impacted from 13 Pitt Road, North Curl Curl, extend southward over the northern rear boundary, encompassing views toward the suburbs alongside the water, as well as the land/water interface for the length from south curl curl beach down to north head.

The view corridors impacted from 15 Pitt Road, North Curl Curl, extend southward/south-east over the northern rear boundary and western side boundary, encompassing views toward north head, including the land/water interface. Views of the headland and land/water interface are predominantly obstructed by vegetation directly to the south over the rear boundary of 8 Taylor Street, North Curl Curl.

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

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

Comment to Principle 2:

The affected view corridors obtained from 13 Pitt Road, North Curl Curl are observed from the following places:

Seated: Kitchen, Dining Area, Lounge Room, First Floor Bedroom, Rear Deck.

Standing: Kitchen, Dining Area, Lounge Room, Rear Deck.

The affected view corridors obtained from 15 Pitt Road, North Curl Curl are observed from the following places:

Seated: Dining Area, Kitchen, Lounge Room.

Standing: Dining Area, Rear Balcony, Lounge Room.

3. Extent of impact

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

Comment to Principle 3:

The proposed development will obscure valuable views, primarily affecting the discussed two sites to the north, and particularly to the valuable land-water interface. However, efforts have been made to minimise view loss by preserving views over the western portion of the site from both affected properties. While some valuable views over the northern rear boundary of the subject site will be obstructed, a substantial portion of key view corridors remains intact. As a result, although the development will cause some notable obstruction, significant view opportunities are retained. Given the extent of the impacted views, the overall view loss is assessed as moderate.

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 non-compliances with *Clause B1 Wall height, Clause B7 Front Boundary Setbacks, Clause B9 Rear Boundary Setbacks and Clause D1 Landscaped Open Space (LOS) and Bushland Setting* are present and have been addressed within this report. These variations are deemed acceptable, as detailed elsewhere in this report, and notably does not result in any direct view loss impacts, excluding *Clause B1 Wall Heights*.

While the proposal results in view loss, views over the western portion of the subject site are predominantly preserved. The revised design reflects a deliberate effort to minimise bulk, enhance transparency, and maintain important view corridors for the adjoining sites down the western corridor of the site. Concerns raised in earlier design iterations have been addressed, resulting in a proposal that balances development potential with reasonable view sharing. Notably, the non-compliance with *Clause B9 Rear Boundary Setbacks* as detailed within the original proposal, has been amended to achieve full compliance in the first-floor addition. While reducing the wall height non-compliance would be achievable by stepping the first floor further west, this would, in turn, exacerbate view loss impacts, and therefore this non-compliance has been deemed acceptable. On balance, the current proposal is considered supportable. Additionally, the non-compliances with *Clause B7 Front Boundary Setbacks and Clause D1 Landscaped Open Space (LOS) and Bushland Setting* do not notably contribute to view loss.

Furthermore, additional design modifications aimed at reducing impacts would likely compromise the amenity of the subject site.

Based on the above assessment, the proposed view loss is considered acceptable in this instance.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal demonstrates a balance between innovative design and compatibility with the surrounding urban context.

- *To ensure existing canopy trees have priority over views.*

Comment:

The proposal appropriately prioritises the retention of existing canopy trees while minimising view impacts where possible.

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

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 \$6,105 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$610,500.

CONCLUSION

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

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

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 the receipt of greater than five (5) submissions.

The concerns raised in the objections have been addressed and resolved via the amended Architectural Plans as detailed above.

The critical assessment issues include *Clause B1 Wall height, Clause B7 Front Boundary Setbacks, Clause B9 Rear Boundary Setbacks, Clause D1 Landscaped Open Space (LOS) and Bushland Setting and Clause D7 Views.*

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 DA2024/0715 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 22 DP 1040941, 11 Taylor Street, NORTH CURL CURL, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A02	1	SITE PLAN & SITE ANALYSIS	Scope Architects	31 October 2024
A03	1	LOWER GROUND FLOOR PLAN	Scope Architects	31 October 2024
A04	1	GROUND FLOOR PLAN	Scope Architects	31 October 2024
A05	1	FIRST FLOOR PLAN	Scope Architects	31 October 2024

A06	1	ELEVATIONS	Scope Architects	31 October 2024
A07	1	ELEVATIONS	Scope Architects	31 October 2024
A08	1	CROSS SECTIONS	Scope Architects	31 October 2024
A09	1	LONG SECTIONS	Scope Architects	31 October 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Report	-	White Geotechnical Group	10 May 2024
BASIX Certificate	A1770787_02	SCOPE ARCHITECTS PTY LTD	31 October 2024
Waste Management Plan	-	Matthew Olsson	5 June 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) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$6,105.00 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 \$610,500.00.

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

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

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

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

6. Security Bond

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

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Stormwater Drainage Disposal

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

8. Installation and Maintenance of Sediment Control

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

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

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

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

waterways.

9. **Compliance with Standards**

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

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

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

10. **Sydney Water "Tap In"**

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

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

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

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

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

11. **Waste Management Plan**

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

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

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

DURING BUILDING WORK

12. **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.

13. **Survey Certificate**

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

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

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

14. Maintenance of Sediment and Erosion Controls

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

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

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

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

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

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

15. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

16. Stormwater Drainage Disposal Certification

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

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

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

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the

certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

17. **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.

18. **Swimming Pool Requirements**

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

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

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

19. **Geotechnical Recommendations**

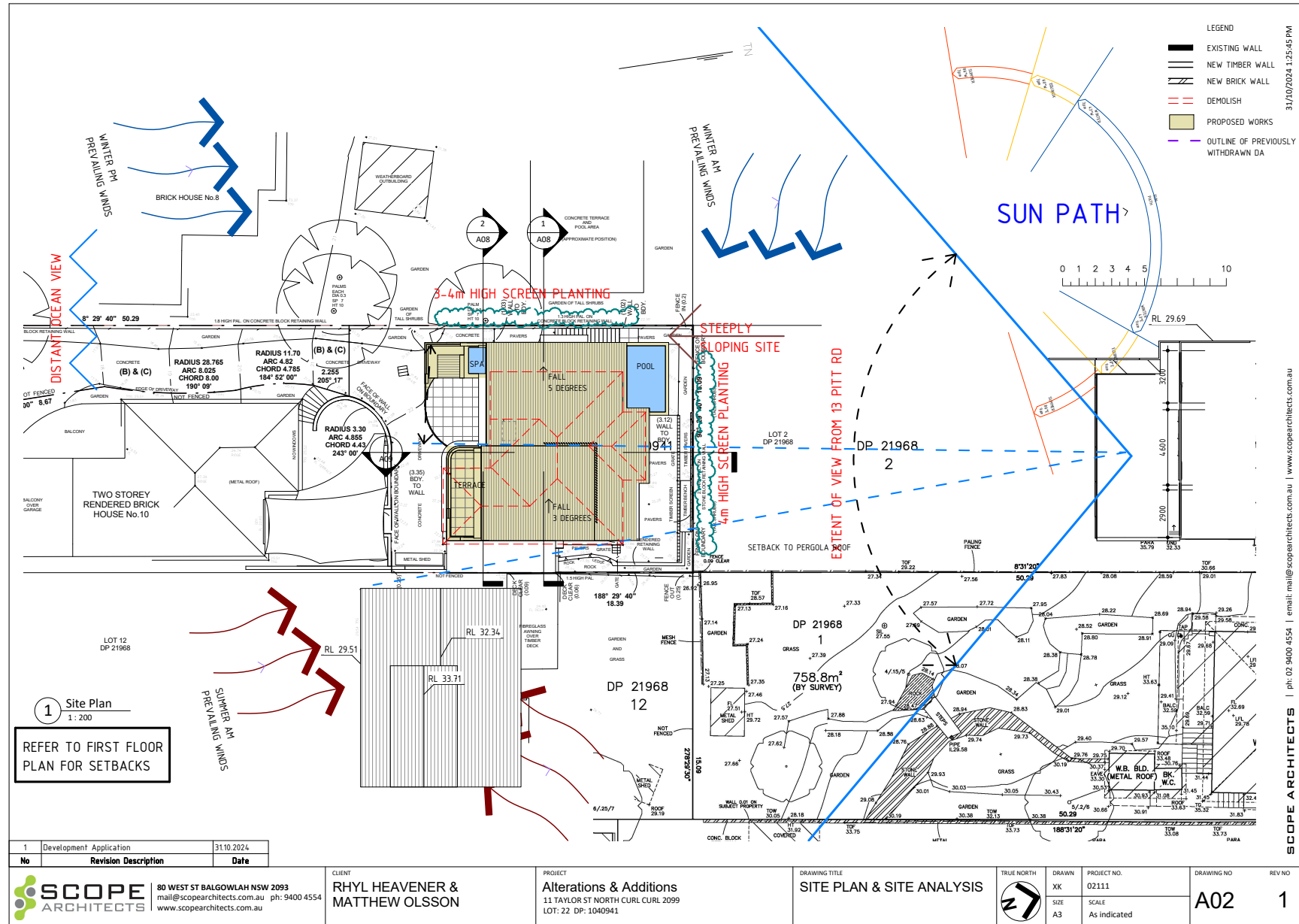
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

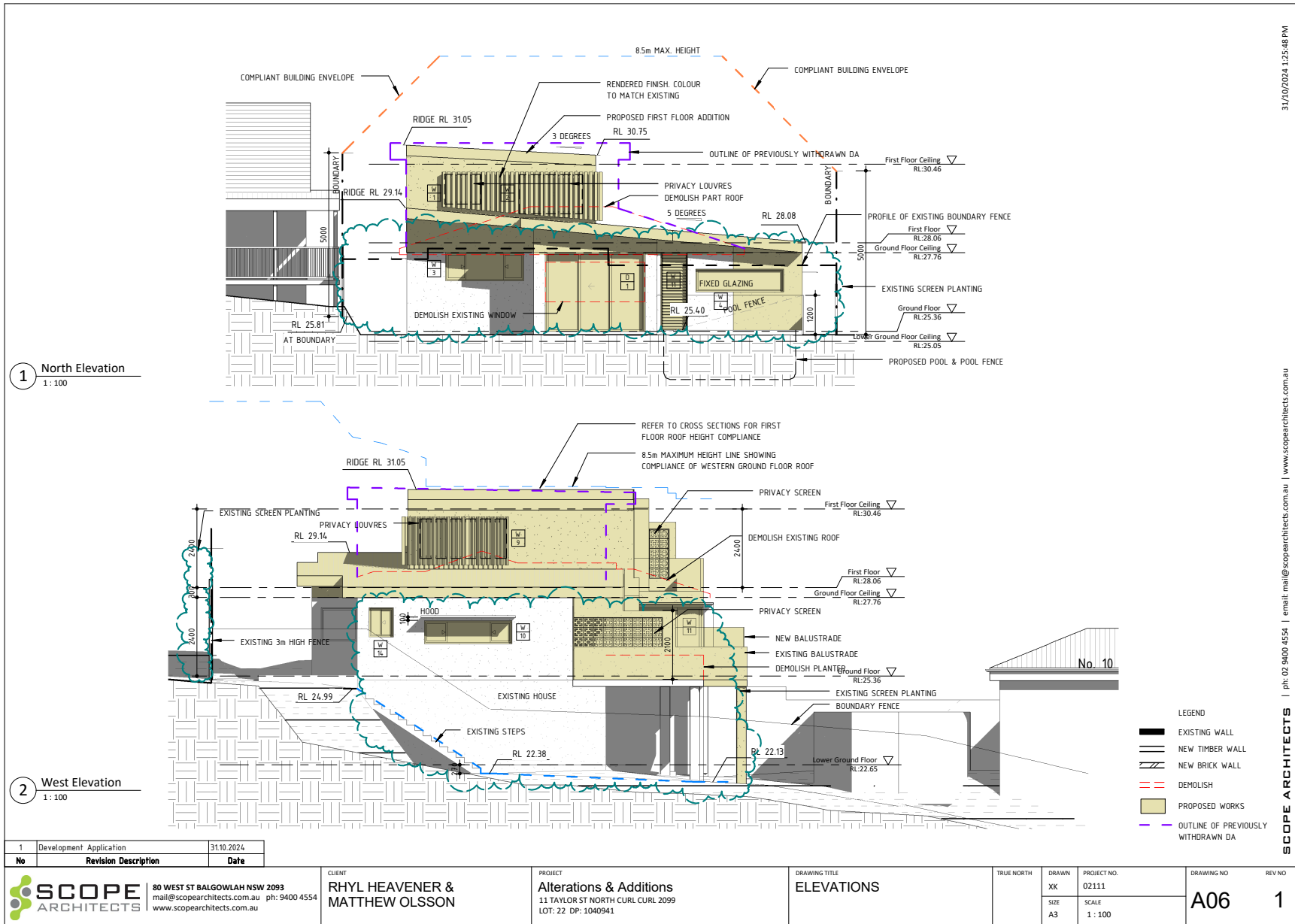
Reason: To ensure geotechnical risk is mitigated appropriately.

20. **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.

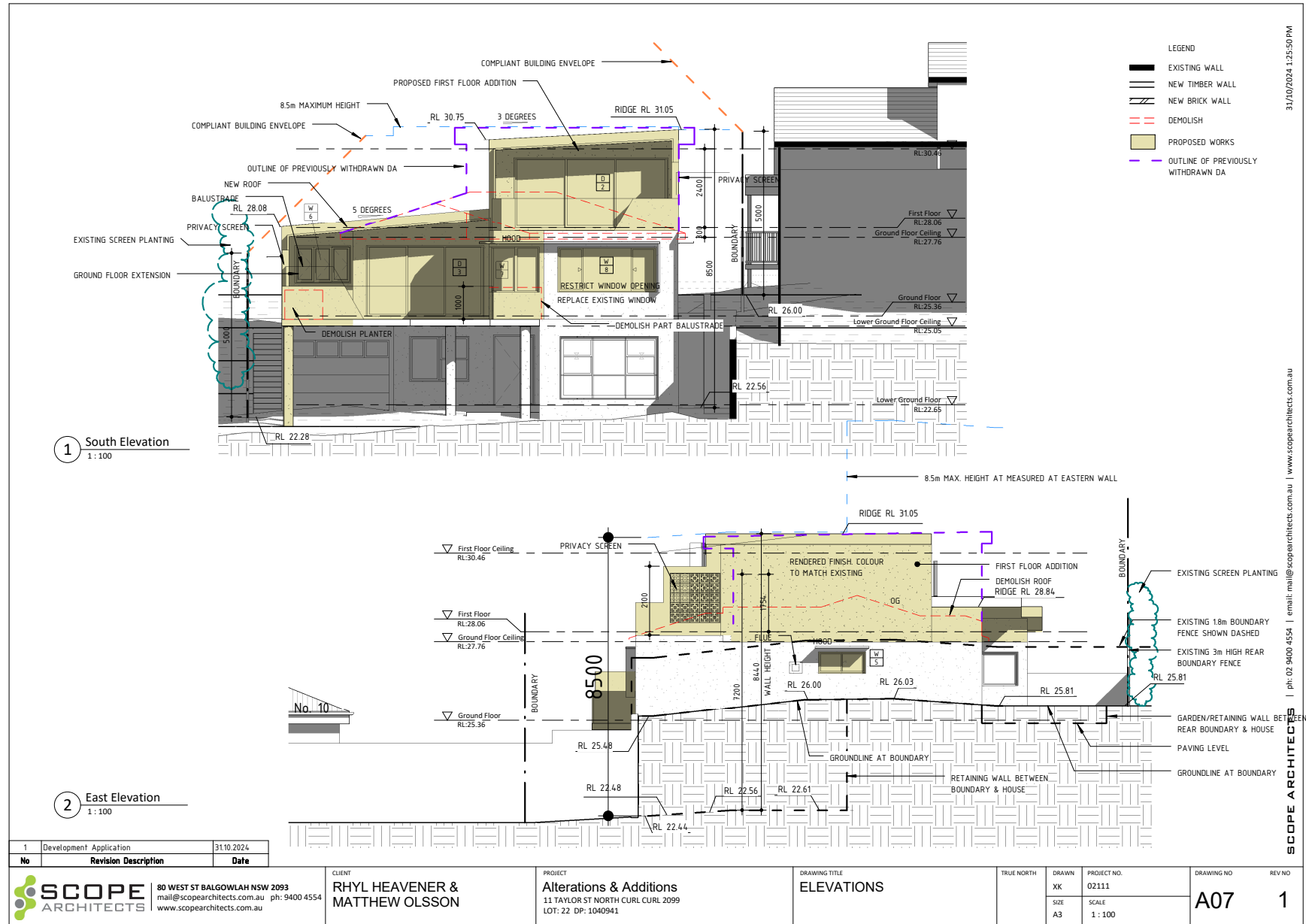
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.





31/10/2024 1:25:48 PM

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**ITEM 3.3 DA2024/1427 - 14 BAREENA DRIVE BALGOWLAH HEIGHTS -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**

PURPOSE

- A) To refer the attached application for determination as required under adopted delegations of the Charter.
- B) To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard.

RECOMMENDATION

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of 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 DA2024/1427 for alterations and additions to a dwelling house on land at Lot 4 DP 758044, 14 Bareena Drive BALGOWLAH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2025/146771
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1427
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Responsible Officer:	Michael French
Land to be developed (Address):	Lot 4 DP 758044, 14 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Has Studio Pty Ltd

Application Lodged:	24/10/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/11/2024 to 15/11/2024
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.3 Height of buildings: 4.7%
Recommendation:	Approval

Estimated Cost of Works:	\$ 820,600.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house.

The application is referred to the Development Determination Panel (DDP) due to the receipt of five (5) or more submissions.

Concerns raised in the objections predominantly relate to privacy impacts.

The proposal includes variations to the principal development standards under the Manly Local Environmental Plan 2013- to *Clause 4.3 Height of Buildings*, and the built form controls under the Manly Development Control Plan, these being; *Clause 4.1.2.1 Wall Height* and *Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages*. The proposal in regard to these variations do not result in

unacceptable environment and/or amenity impacts, with the development achieving the relevant objectives.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. Five (5) submissions were received.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal (as amended) is a suitable and an acceptable development for the subject site for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

This application seeks development consent for the following:

Ground Floor

- Demolition works
- Reconfiguration of the floor plate to form an open plan kitchen, living and dining room, a rumpus room, pantry, laundry, powder room, and a guest room with an adjoining ensuite.
- Alterations to the existing door and window schedule.

First Floor

- Demolition works
- Reconfiguration of the floor plate to form a family room, bathroom, two (2) bedrooms, and a master bedroom adjoining a WIR, ensuite and a balcony.
- Alterations to the existing window schedule.

ASSESSMENT INTRODUCTION

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

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

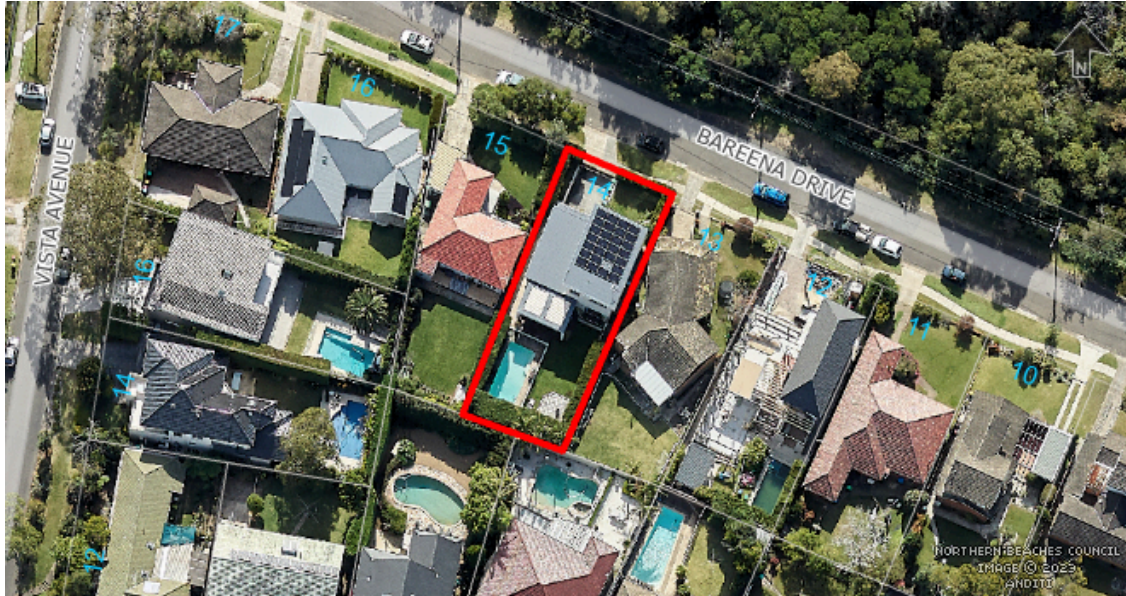
SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R2 Low Density Residential
 Manly Local Environmental Plan 2013 - 4.3 Height of buildings
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 4 DP 758044 , 14 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Bareena Drive. The site is irregular in shape with a frontage of 16.46m along Bareena Drive and a maximum depth of 40.17m. The site has a surveyed area of 618.1m². The site is located within the R2 Low Density Residential zone pursuant to the Manly Local Environmental Plan 2013 and accommodates a two (2) storey dwelling. The site has a mild downward slope toward the northern frontage of the site. The site does not contain any significant vegetative features. There are no details of any threatened species on site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a mix of dwellings within an R2 Low Density Residential zone.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested to address privacy concerns raised via objection. The amended proposal demonstrates a privacy impact that is considered acceptable, and the overall development is deemed supportable in this instance. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 01/11/2024 to 15/11/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mrs Jane Lesley Robertson	20 Willawa Street BALGOWLAH HEIGHTS NSW 2093
Mr Willem Philip John Clasie	13 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Withheld Withheld	BALGOWLAH HEIGHTS NSW 2093
Toby Longley Ledgerwood	15 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Mr Simon Ramsay Dougall	16 Vista Avenue BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submissions:

- *Clause 3.4.2 Privacy and Security* (Manly Development Control Plan)
- *Clause 4.1.4 Setbacks (front, side and rear) and Building Separation/ Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)* (Manly Development Control Plan)
- *Clause 4.3 Height of buildings* (Manly Local Environmental Plan 2013)
- *Clause 4.6 Variation Request*
- *Notification Sign*

The above issues are addressed as follows:

- **Clause 3.4.2 Privacy and Security**

The submissions raised concerns related to privacy impacts to the following sites:

- 20 Willawa Street, Balgowlah Heights: Concerns were raised about the line of sight from the proposed first-floor family room through the southward facing window W09. The submission requests modifications to reduce privacy impacts.
- 13 Bareena Drive, Balgowlah Heights: Concerns were raised regarding privacy impacts from ground-floor windows W04 (adjoining the pantry), W05 (adjoining the powder room), and W06 (adjoining the ensuite). The submission suggests these windows be made obscured to mitigate privacy concerns. Further concerns were raised regarding first-floor windows W14 (adjoining bedroom 2, eastern elevation) and W13 (adjoining bedroom 3, southern elevation).
- 15 Bareena Drive, Balgowlah Heights: Concerns were raised about the privacy impact from ground-floor windows W01 (adjoining the dining room) and W03 (adjoining the rumpus room). The submission also points out that the window adjacent to the rumpus room (west-facing) lacks proper annotation. First-floor windows W09 (adjoining the family room) and W12 (adjoining bedroom 3) were also identified as privacy concerns.

- 14 Vista Avenue, Balgowlah Heights: The submission raised concerns regarding privacy impacts from the south-facing windows W09 and W13 on the first floor.
- 16 Vista Avenue, Balgowlah Heights: The submission raised concerns regarding privacy impacts from the windows on the first floor.

Comment:

The proposed dwelling has been assessed against the requirements and objectives of *Clause 3.4.2 Privacy and Security* and is considered supportable in this instance as follows:

- 20 Willawa Street, Balgowlah Heights: The proposed first-floor, south-facing windows, W09 and W13, are positioned at a significant distance from the rear yard and windows of this site. The proposed privacy impact is considered acceptable and consistent with privacy expectations within a residential setting.
- 13 Bareena Drive, Balgowlah Heights: The ground-floor windows (W04, W05, and W06) are located in low-traffic areas, including the pantry, powder room, and ensuite. As these are not primary living spaces and are positioned at ground level, they are unlikely to result in unreasonable privacy impacts or overlooking. Similarly, the first-floor windows (W13, W14 and W15) are situated in bedrooms and an ensuite, which are also low-traffic areas. Given their function and placement, they are not expected to cause unreasonable view loss or overlooking. Based on these considerations, the privacy impact is considered acceptable in this instance.
- 15 Bareena Drive, Balgowlah Heights: The southern-facing windows (W01, W03, W09 and W13) are oriented toward the rear yard to minimise visual intrusion into the rear yard of this adjoining site. Additionally, to further reduce overlooking impacts particularly toward the portion of the rear yard closest to the dwelling, the feature wall nibs to the rear of the dwelling along the western elevation have been increased by 600mm. Furthermore, western facing windows W12 and W21, located on the eastern portion of the dwelling, are equipped with a fixed external louvre/blind, providing necessary privacy to this site. In this regard, the proposed privacy impact is considered acceptable in this case. It should also be noted that amended plans were submitted that correctly identify the window of concern raised via submission as W21.
- 14 Vista Avenue, Balgowlah Heights: The first-floor windows W09, W12, and W13 are situated at a significant distance from the rear yard and windows of this site. The proposed privacy impact is considered minimal and is deemed supportable in this instance.
- 16 Vista Avenue, Balgowlah Heights: The first-floor windows W09, W12, and W13 are situated at a significant distance from the rear yard and windows of this site. The proposed privacy impact is considered minimal and is deemed supportable in this instance.

- **Clause 4.1.4 Setbacks (front, side and rear) and Building Separation/ Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)**

The submissions raised concerns that the proposed development does not comply with side setback or wall height requirements, and that these will directly lead to unacceptable impact on solar access and perceived bulk and scale.

Comment:

Assessment against the objectives of *Clause 4.1.4 Setbacks (front, side and rear) and Building Separation* and *Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)* is detailed elsewhere within this report. Furthermore, the proposal has been assessed against the requirements of *Clause 3.4.2 Sunlight Access and Overshadowing*, and the built form controls which regulate bulk and scale. The proposal is considered supportable in

this regard, as detailed elsewhere within this report.

- **Clause 4.3 Height of buildings**

The submissions raised concerns that the proposed building height would result in unreasonable adverse amenity impacts, specifically, overshadowing.

Comment:

Assessment against *Clause 4.3 Height of buildings* is detailed elsewhere within this report. Furthermore, the proposal is compliant with the requirements of *Clause 3.4.2 Sunlight Access and Overshadowing*. The proposal is considered supportable in this regard.

- **Clause 4.6 Variation Request**

The submissions express concerns about the extent of the height breach, highlighting inconsistencies between the maximum height measurements in the 3D Height Plane Diagram and the architectural plans. Additionally, concerns are raised that, in addition to the non-compliance, the proposal does not align with the objectives of the height of buildings standard and will result in adverse environmental impacts.

Comment:

The 3D Height Plane is a visual tool to illustrate the development's impact, while the building height has been accurately assessed using the section plan with specified RLs, measured from the top of the existing ground floor slab. The maximum building height as assessed in this report is based on this measurement.

Assessment against *Clause 4.3 Height of buildings* is detailed elsewhere within this report. The proposal is considered supportable in this regard.

- **Notification Sign**

The submissions raised concerns that the notification sign was not correctly displayed on premises.

Comment:

Council has reviewed images confirming that the Notification Sign was properly displayed throughout the notification period. The provided evidence meets Council's requirements, and no further assessment is necessary. The proposal is considered supportable in this regard.

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10, 2.11 & 2.12); • State Environmental Planning Policy (Biodiversity & Conservation) 2021 • Relevant LEP and DCP clauses.

Internal Referral Body	Comments
	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 apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BMA Urban dated September 2024, the DA satisfies requirements under clause 2.12 of the SEPP. As such, it is considered that the application is consistent with with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. State Environmental Planning Policy (Biodiversity & Conservation) 2021 Harbour Foreshores & Waterways Area The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.6 and 6.7, Division 2 of the State Environmental Planning Policy (Biodiversity & Conservation) 2021 apply in assessing this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by , it is determined that the Planning Principles and Matters for Consideration of the Area have been met. 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 BMA Urban dated

Internal Referral Body	Comments
	September 2024, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application is 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)	The proposed development is in Region 3. Vehicle crossing is not proposed. On-site detention is not required. Development engineering raises no objections to the proposed development, subject to conditions.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1768537_02 dated 4 February 2025).

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.

SEPP (Resilience and Hazards) 2021**Chapter 4 – Remediation of Land**

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.9m	4.7%	No
Floor Space Ratio	FSR: 0.4:1	FSR: 0.4:1 (247m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes

Clause	Compliance with Requirements
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
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R2 Low Density Residential

Zone objectives

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

Comment:

The proposal is considered to wholly comply with the above-mentioned objective.

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

Comment:

The proposal is considered to wholly comply with the above-mentioned 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 proposal is considered to wholly comply with the above-mentioned objective.

4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.9m
Percentage variation to requirement:	4.7%

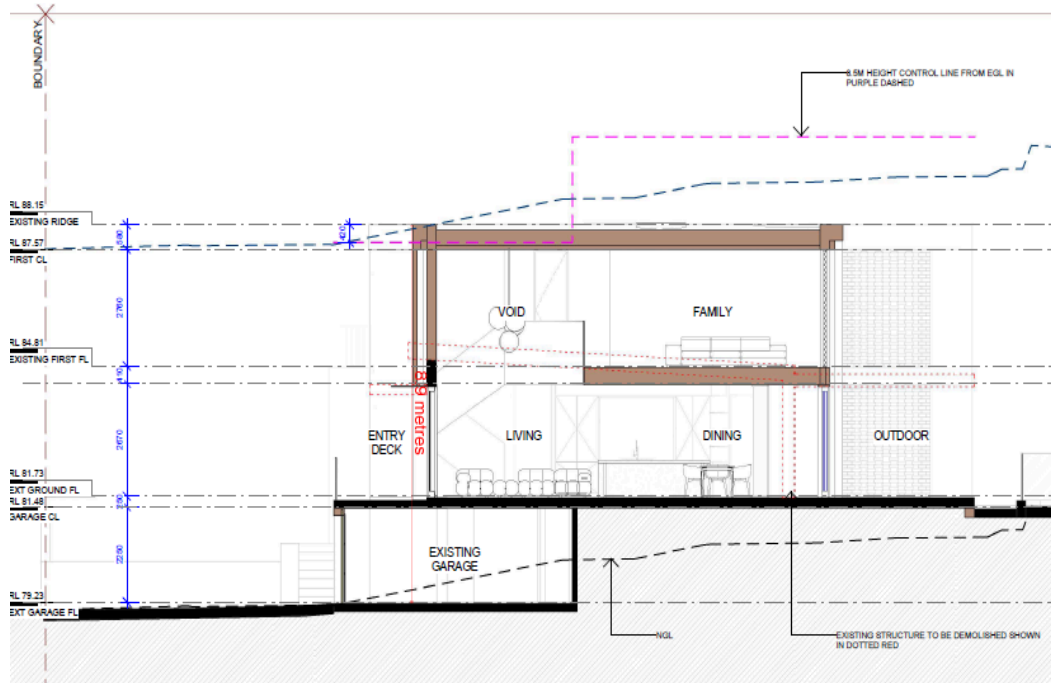


Figure 1: Section Plan depicting the maximum height of buildings

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks

to justify the contravention of the development standard by demonstrating:

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
 (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
 (c) to promote the orderly and economic use and development of land,
 (d) to promote the delivery and maintenance of affordable housing,
 (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
 (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
 (g) to promote good design and amenity of the built environment,
 (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
 (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
 (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- *The proposed development adopts an architectural form, height, and massing compatible with the existing and emerging housing typology.*
- *The proposal promotes good design by enhancing the future amenity of the dwelling while aligning with the surrounding built environment.*
- *The development ensures no negative environmental or social impacts, contributing to the economic and ecological sustainability of the area.*
- *The proposal is consistent with the objectives of the development standard and R2 Low-Density Residential Zone.*
- *The height non-compliance arises due to the site's sloping topography and previous excavation, as illustrated in the Section A-A drawing.*
- *Despite the minor breach, the design respects the natural landform and ensures high residential amenity without adverse impacts on neighboring properties (visual bulk, privacy, views, or overshadowing).*
- *The height breach is well-integrated into the streetscape, avoiding any visually jarring elements.*
- *The site's topographical challenges, including prior excavation, justify the height variation under environmental planning grounds.*

It is agreed that the objectives of the development standard are achieved notwithstanding the non-compliance with the standard. It is considered that the written request has demonstrated consistency with the objectives of the Height of Buildings development standard and zone objectives. It is considered that the applicant has demonstrated that the proposal adequately responds to the amenity of the built environment. In this regard, the applicants written request has satisfactorily demonstrated that the proposed development satisfies cls 1.3 (c) and (g) of the EPA Act. As such, the applicants written request has adequately demonstrated that there is sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the MLEP 2013 are:

(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,

Comment:

The proposed development adopts a height and roof form that align with the site's topographic landscape and prevailing streetscape character. While the minor height breach is a result of site topography and prior excavation, the design respects the natural landform and integrates adequately into the desired future character of the area.

b) to control the bulk and scale of buildings,

Comment:

The development's bulk and scale remain appropriate and proportional to the site, with the height breach confined to a small section resulting from the sloping site.

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 height breach does not obstruct views to or from public spaces or between public spaces.

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

Comment:

The proposal ensures solar access is maintained to both public and private open spaces, as well as habitable rooms of adjacent dwellings. The minor height breach does not result in any unreasonable adverse overshadowing impacts on neighboring properties.

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

Comment:

The development is not located in a recreation or environmental protection zone; however, the design demonstrates sensitivity to the surrounding environment.

Conclusion:

For the reasons detailed elsewhere within this report, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

Exception to Development Standards conclusion

The submitted written Clause 4.6 variation request is considered to be well founded having regard to the circumstances of the development is considered appropriate that flexibility in the application of the development standard Clause 4.3 Height of Buildings be applied. In this context the proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under s.4.15 of the Act. Consequently, the development is considered to be in the public interest, subject to conditions.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

6.9 Foreshore scenic protection area

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

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*

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

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

Comment:

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 618.1m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 6.9m (based on gradient 1:15)	7.1m	2.9%	No
	W: 6.6m (based on gradient 1:60)	7.4m	12.1%	No
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	complies	N/A	Yes
	Parapet Height: 0.6m	complies	N/A	Yes
	Pitch: maximum 35 degrees	complies	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	7.6m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.3m (based on wall height)(east)	1.3m (existing-unchanged)	43.5%	No
	2.2m (based on wall height)(west)	1.4m (existing-unchanged)	36.4%	No
	Windows: 3m	1.4m (existing-unchanged)	53.3%	No
4.1.4.4 Rear Setbacks	8m	15m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	63.9% (395.3m ²)	N/A	Yes
	Open space above ground 25% of total open space	complies	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	47.96% (189.6m ²)	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	complies	N/A	Yes

Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes
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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
3.10 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	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

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

Description of non-compliance

Clause 4.1.2.1 Wall Height requires that that walls are not to exceed the stipulated wall height, determined by the slope of the land.

In this regard, the required maximum wall height along the eastern elevation is 6.9m. The proposed eastern wall height is 7.1m, causing a variation of 2.9%.

In this regard, the required maximum wall height along the western elevation is 6.6m. The proposed eastern wall height is 7.4m, causing a variation of 12.1%.

The proposed wall height remains consistent with the overall scale of the development and does not result in an appearance of excessive bulk. The design effectively manages visual impact through appropriate design, articulation and setbacks. Considering these factors, it is concluded that strict compliance with the requirements of this clause is not necessary in this case. An assessment against the objectives of this clause is conducted below:

Merit consideration

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

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

Comment:

The proposed development responds to the site's natural topography, with its height and roof form designed to integrate adequately into the streetscape.

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

Comment:

An acceptable bulk and scale has been maintained by the proposal. The proposal is considered to achieve a balance between maximising amenity for the dwelling and minimising the building's physical and visual impacts on surrounding properties.

(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:

It is considered that view sharing is maintained to and from the subject site, adjoining sites and public spaces.

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

Comment:

The proposal is deemed to provide acceptable 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.

Comment:

The site is not located within a recreation or environmental protection zone. No further assessment is required.

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

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

Description of non-compliance

Clause 4.1.4.2 Side setbacks and secondary street frontages requires the following:

- *Built structures are setback a minimum of one third of the height of the adjacent external wall of the proposed building.*
- *All new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries.*

The proposal requires a eastern side setback of 2.3m. The development proposes a setback of 1.3m, causing a 43.5% variation.

The proposal requires a western side setback of 2.2m. The development proposes a setback of 1.4m, causing a 36.4% variation.

The development also results in windows setback 1.4m from the side boundary line, causing a 53.3% variation.

The proposed works within the side setback area are considered to have an acceptable impact upon the streetscape character, as well up adjacent and surrounding dwellings. Given that the works forming a non-compliance are not deemed excessive and do not propose an unreasonable amenity impact in this instance, strict compliance with the requirements of this clause is not required, subject to the proposal meeting the objectives of the clause. In this regard, assessment against the objectives of this clause is conducted below.

Merit consideration:

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

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

Comment:

The proposal is considered to sufficiently maintain and enhance the existing streetscape, encompassing the desired spatial proportions of the street, street edge, and landscape character.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The bulk and scale of the built form is minimised/softened by the site topography. The proposal does not unreasonably increase the bulk and scale of the dwelling, and as such, will not unreasonably minimise equitable access to light, sunshine and air movement. The siting of the proposed works provides sufficient space/screening to and from surrounding and adjacent properties. The proposed development is not considered to unreasonably impact view sharing. The proposed works will not adversely impact traffic conditions.

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

Comment:

The development is not considered to have any impact on access within the site. The proposed works are not considered to unreasonably impact amenity.

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:

All mature canopy trees and vegetation are proposed to remain on site. The nature of development is not considered to unduly detract from the context of the site. It is considered that the *provisions of State Environmental Planning Policy No 19 - Urban Bushland* have been adequately satisfied.

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

Comment:

The site is not within a bushfire zone. No further assessment is required.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of \$8,206 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$820,600.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to the receipt of greater than five (5) submissions.

The concerns raised in the objections have been addressed and resolved through an amended set of Architectural Plans as detailed above.

The critical assessment issues include assessment of *Clause 4.3 Height of Buildings, Clause 4.1.2.1 Wall Height and Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages*

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

REASON FOR DETERMINATION

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2024/1427 for Alterations and additions to a dwelling house on land at Lot 4 DP 758044, 14 Bareena Drive, BALGOWLAH HEIGHTS, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A202	B	SITE PLAN	ZH	29 January 2025
A301	B	EXISTING GARAGE FLOOR PLAN	ZH	29 January 2025
A302	B	EXISTING GROUND FLOOR PLAN	ZH	29 January 2025
A303	B	EXISTING FIRST FLOOR PLAN	ZH	29 January 2025
A304	B	PROPOSED GROUND FLOOR PLAN	ZH	29 January 2025
A305	B	PROPOSED FIRST FLOOR PLAN	ZH	29 January 2025
A306	B	ROOF PLAN	ZH	29 January 2025
A401	B	SECTION AA	ZH	29 January 2025
A402	B	SECTION BB	ZH	29 January 2025
A501	B	NORTH ELEVATION	ZH	29 January 2025
A502	B	SOUTH ELEVATION	ZH	29 January 2025
A503	B	EAST ELEVATION	ZH	29 January 2025
A504	B	WEST ELEVATION	ZH	29 January 2025
A901	B	MATERIALS & WINDOW SCHEDULES	ZH	29 January 2025
A902	B	LANDSCAPE PLAN	ZH	29 January 2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	A1768537_02	BONNEFIN CONSULTING PTY LTD	4 February 2025
Waste Management Plan	-	HAS Studio	October 2024
Bushfire Assessment Report	-	Building Code & Bushfire Hazard Solutions Pty Limited	9 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	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 \$8,206.00 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 \$820,600.00.

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.

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

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

Drainage Works

As security against any damage or failure to complete the construction of stormwater drainage works required as part of this consent a bond of \$7,000.00.

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

8. Stormwater Disposal

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

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

9. Installation and Maintenance of Sediment Control

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

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

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

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

waterways.

10. **Waste Management Plan**

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

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

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

11. **Erosion and Sediment Control Plan**

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

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- 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.

12. **Compliance with Standards**

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

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

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

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

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

DURING BUILDING WORK

15. **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.

16. **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.

17. **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.

18. **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

19. **Stormwater Disposal**

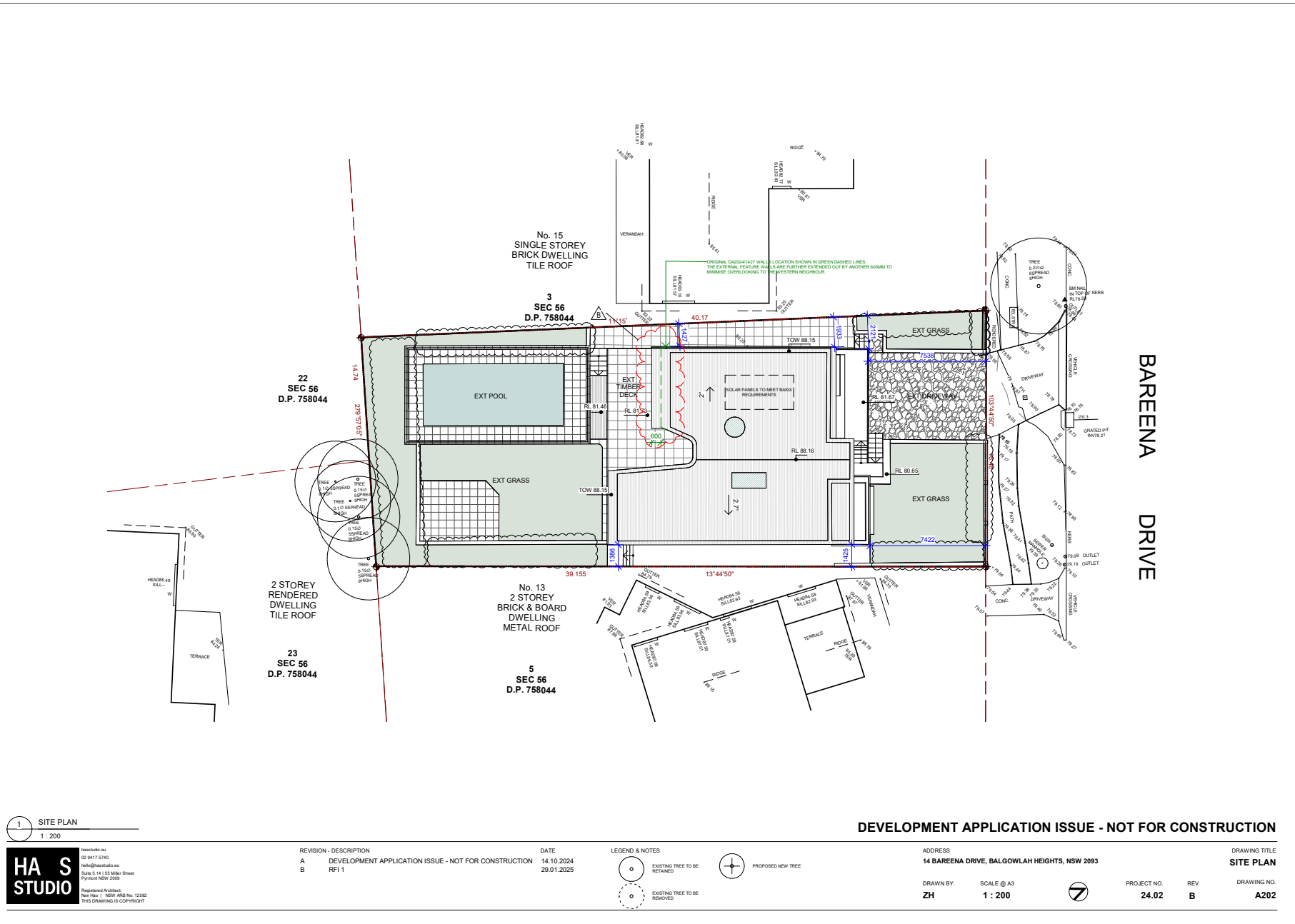
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

20. **Waste Management Confirmation**

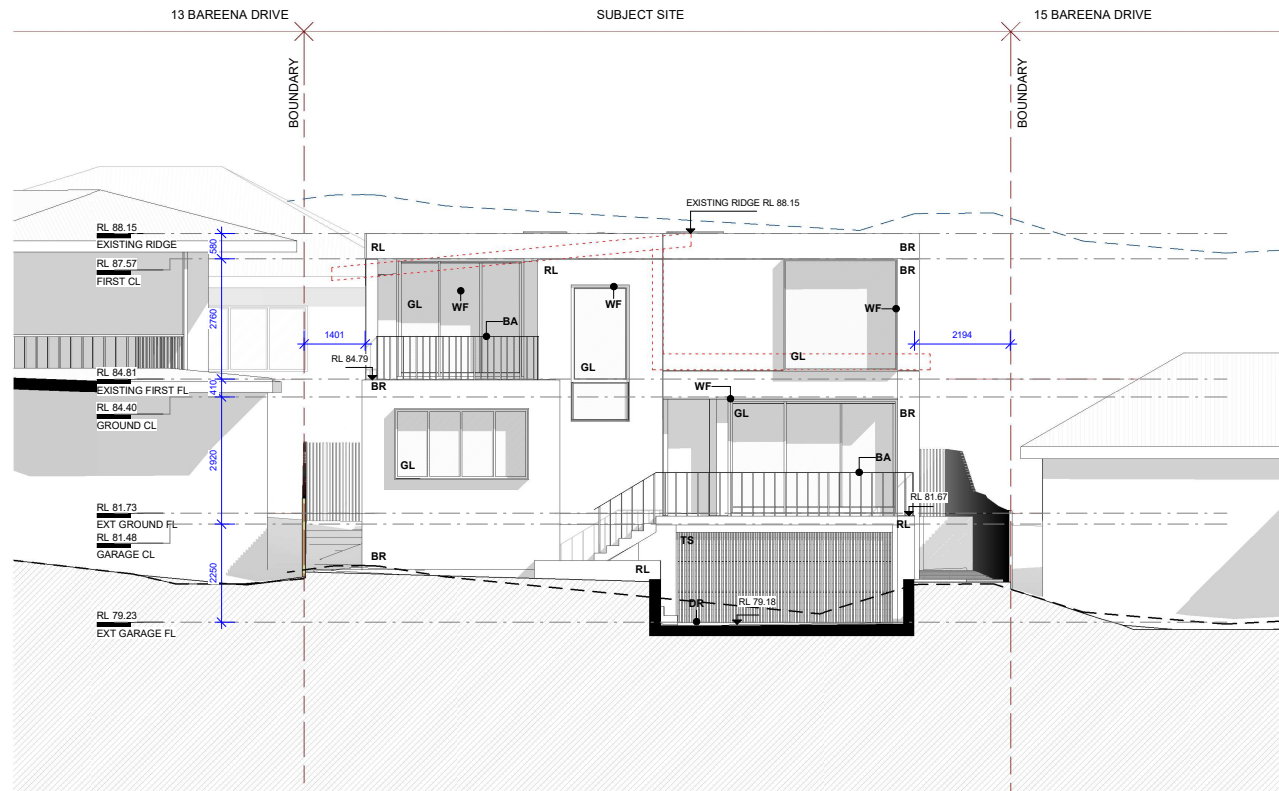
Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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



MATERIALS LEGEND
(REFER TO DA901)

BR - FACE BRICK - LIGHT
CO - CONCRETE LIGHT
RL - RENDER - LIGHT
BA - BALUSTRADE - METAL
TS - TIMBER SLATS
RO - ROOF
WF - WINDOW FRAMES
GL - GLASS
DR - DRIVEWAY
GL - GLASS - CLEAR
ST - SANDSTONE



1 NORTH ELEVATION
1 : 100

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Registered Architect
New Plan 1 NSW ARB No: 12352
THIS DRAWING IS COPYRIGHT

REVISION - DESCRIPTION
A DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION
B RFI 1
DATE
14.10.2024
29.01.2025

LEGEND & NOTES

DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION

ADDRESS
14 BAREENA DRIVE, BALGOWLAH HEIGHTS, NSW 2093

DRAWING TITLE
NORTH ELEVATION

DRAWN BY:
ZH

SCALE @ A3
1 : 100

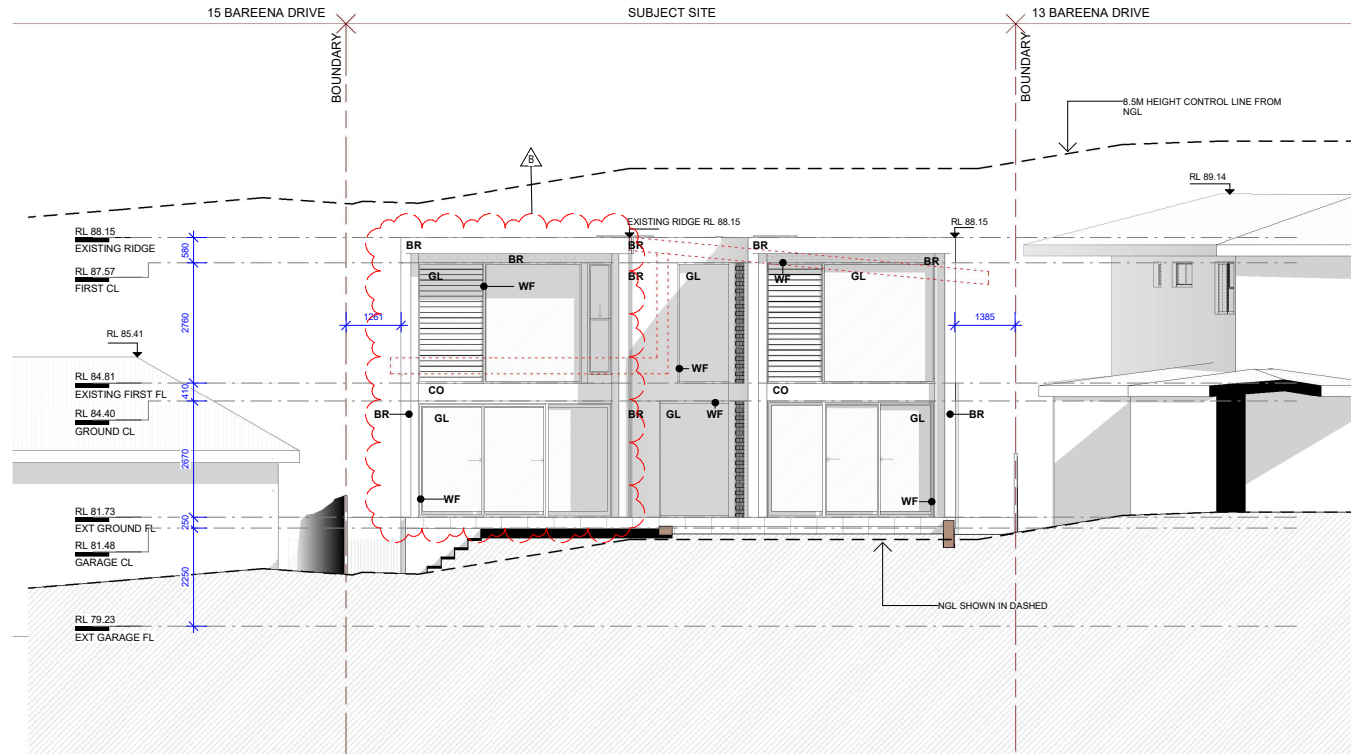
PROJECT NO.
24.02

REV
B

DRAWING NO.
A501

MATERIALS LEGEND
(REFER TO DA901)

BR - FACE BRICK - LIGHT
CO - CONCRETE LIGHT
RL - RENDER - LIGHT
BA - BALUSTRADE - METAL
TS - TIMBER SLATS
RO - ROOF
WF - WINDOW FRAMES
GL - GLASS
DR - DRIVEWAY
GL - GLASS - CLEAR
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1 SOUTH ELEVATION
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29.01.2025

LEGEND & NOTES

DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION

ADDRESS
14 BAREENA DRIVE, BALGOWLAH HEIGHTS, NSW 2093

DRAWING TITLE
SOUTH ELEVATION

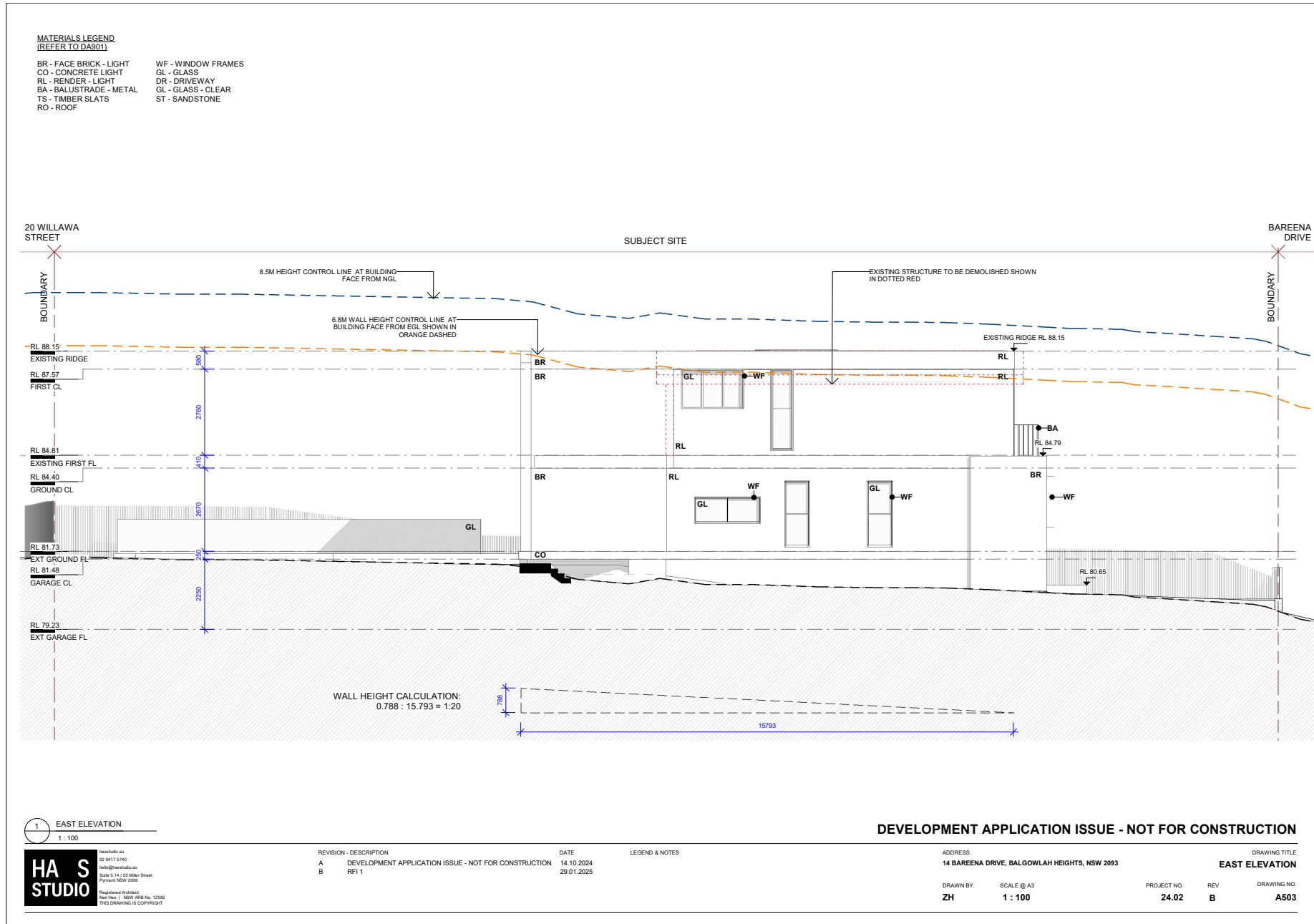
DRAWN BY:
ZH

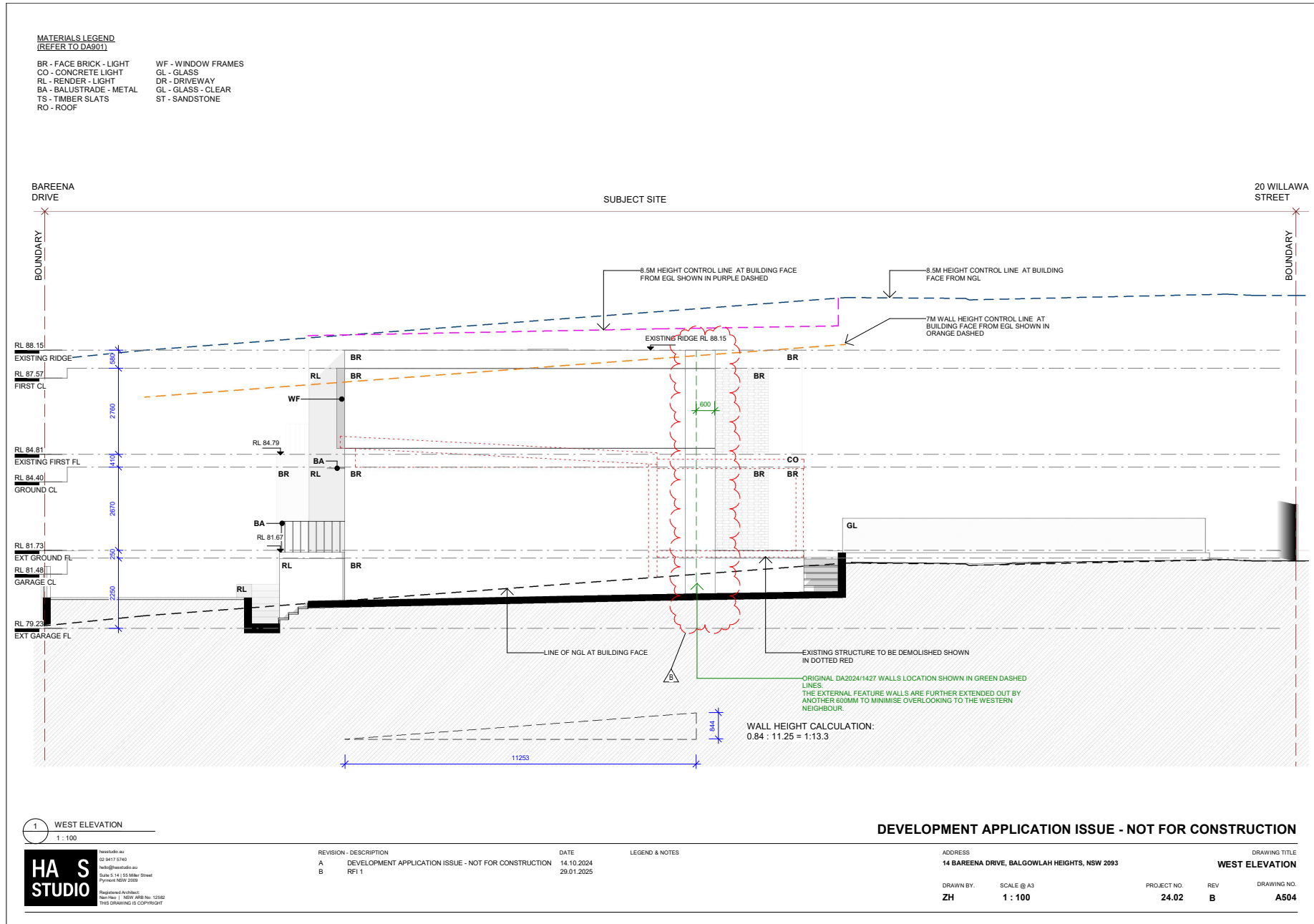
SCALE @ A3
1 : 100

PROJECT NO.
24.02

REV
B

DRAWING NO.
A502







Clause 4.6 Variation Request

Clause 4.3 - Height of Buildings
MLEP 2013

14 Bareena Drive, Balgowlah Heights

September 2024





Statement of Environmental Effects
14 Bareena Drive, Balgowlah Heights
Project No # 267/24

1. INTRODUCTION

This Clause 4.6 Exceptions to Development Standards request has been prepared BMA Urban on behalf of HA S. It is submitted in support of a Development Application for the '**alterations and additions**' to the dwelling at 14 Bareena Drive, Balgowlah Heights

This request seeks approval to vary the height of buildings development standard in clause 4.3 of the *Manly Local Environmental Plan 2013* (MLEP 2013). Clause 4.3 prescribes a numerical building height limit of 8.5m over the subject site. The proposed building height departs from this standard as demonstrated in **Part 2** of this variation request.

Clause 4.6 of the MLEP 2013 enables consent for development to be granted even though it contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development.

As the following request demonstrates, flexibility may be afforded by Clause 4.6 because compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the standard.

The following sections of the report provide an assessment of the request to vary the development standard relating to "**height of buildings**" in accordance with Clause 4.6 of MLEP 2013.

Consideration has been given to the following matters within this assessment:

- *Guide to varying Development Standards*, prepared by the Department of Planning and Environment dated November 2023.
- *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582
- Relevant planning principles and judgments issued by the Land and Environment Court. The *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 court judgment is the most relevant of recent case law.

Chief Justice Preston of the Land and Environment Court confirmed in the above judgment:

The consent authority must, primarily, be satisfied the applicant's written request adequately addresses the 'unreasonable or unnecessary' and 'sufficient environmental planning grounds' tests:

"that the applicant's written request ... has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ... and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard ..." [15]

On the 'Five Part Test' established under *Wehbe v Pittwater Council* [2007] NSWLEC 827:

"The five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked



Statement of Environmental Effects
14 Bareena Drive, Balgowlah Heights
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ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way..." [22]

That in establishing 'sufficient environmental planning grounds' the focus must be on the contravention and not the development as a whole:

"The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole" [26]

That clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development:

"Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard will have a better environmental planning outcome than a development that complies with the development standard."

[88]

This clause 4.6 variation has specifically responded to the matters outlined above and demonstrates that the request meets the relevant tests with regard to recent case law.

In accordance with the MLEP 2013 requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied (**Part 2**);
- identifies the variation sought (**Part 2**);
- summarises relevant case law (**Part 3**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Part 4**);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Part 4**); and
- provides a conclusion summarising the preceding parts (**Part 5**).

This Clause 4.6 Exceptions to Development Standards request should be read in conjunction with the architectural plans prepared by HA S.



Statement of Environmental Effects
14 Bareena Drive, Balgowlah Heights
Project No # 267/24

2. VARIATION OF HEIGHT OF BUILDINGS STANDARD

2.1 DEVELOPMENT STANDARD

Clause 4.3(2) of MLEP 2013 sets out the maximum building height for development as shown on the Height of Buildings Map. The site is subject to a maximum building height of 8.5 metres, as illustrated in **Figure 1** below.



Figure 1: Height of Buildings Map
(Source: NSW Planning Portal Spatial viewer)

Subject site

Clause 4.3(1) of MLEP 2013 sets out the objectives for building height, 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 conservation zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.



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The definition of "building height" for the purposes of clause 4.3 of MLEP 2021 is 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."

2.2 VARIATION TO HEIGHT OF BUILDINGS STANDARD

The proposed height departure across the dwelling when measured against the existing excavated ground lines is a maximum of 440mm or 5.1%. When measured against the natural ground lines, which in this case, are more reflective of the natural topography of the land, a diminutive height breach is observed. The extent of contravention with the prescribed height measured against the existing levels is best demonstrated in Figure 2 below.



Figure 2: Height breach 3D diagram
Source: HA S



Statement of Environmental Effects
14 Bareena Drive, Balgowlah Heights
Project No # 267/24

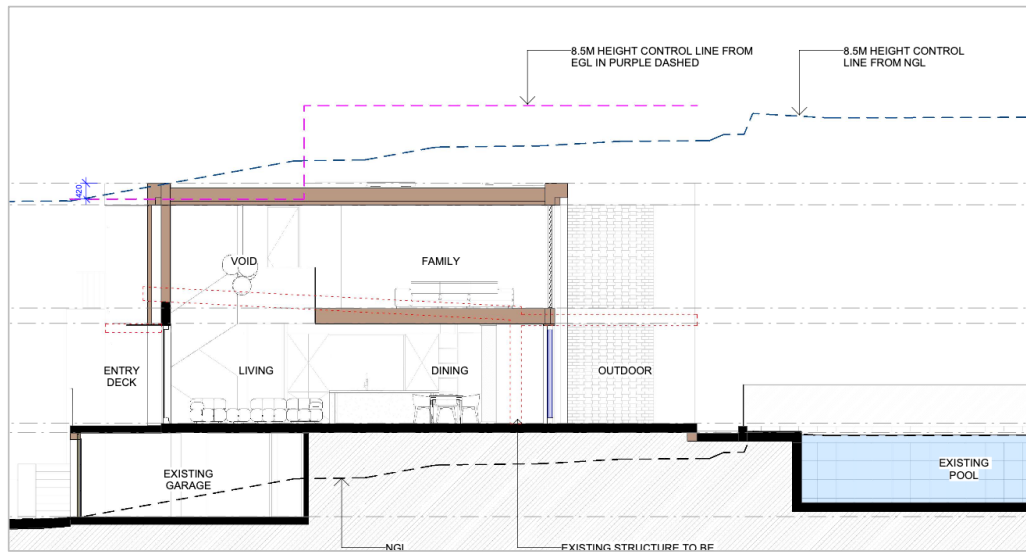


Figure 3: Height breach Section A-A
Source: HA S



Statement of Environmental Effects
14 Bareena Drive, Balgowlah Heights
Project No # 267/24

3. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of MLEP 2013 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of MLEP 2013 are:

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

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority consider a written request from the applicant that seeks to justify the contravention of the development 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.*

Clause 4.6(4) requires the consent authority to keep a record of its assessment under subclause (3).

This clause 4.6 request demonstrates that compliance with the height of building prescribed for the site in Clause 4.3 of MLEP 2013 is unreasonable, and there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is consistent with the development standard.

In accordance with clause 4.6(3), the applicant requests that the building height standard be varied.



4. ASSESSMENT OF THE CLAUSE 4.6 VARIATION

The following sections of this report provide a comprehensive assessment of the request to vary the development standard relating to height of buildings, in accordance with clause 4.3 of MLEP 2013.

Detailed consideration has been given to the following matters within this assessment:

- *Guide to varying Development Standards*, prepared by the Department of Planning & Environment dated November 2023; and
- Relevant planning principles and judgements issued by the NSW Land and Environment Court.

The following sections of this report provide detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of MLEP 2013.

4.1 ABILITY TO VARY THE STANDARD

The height of buildings standard as prescribed in Clause 4.3 of MLEP 2013 is a development standard capable of being varied under clause 4.6(2) of that LEP. The proposed variation is not excluded from the operation of clause 4.6(2) of MLEP 2013, as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of that LEP.

4.2 CONSIDERATION

4.2.1 Clause 4.6(3)(a) – Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires that the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently reaffirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable or unnecessary’ requirement.

■ ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43]).

The specific objectives of the height of buildings development standard, as specified in clause 4.3(1) of MLEP 2013, are detailed in the table below. An assessment of the consistency of the proposed development with each of the objectives is also provided.



Statement of Environmental Effects
14 Bareena Drive, Balgowlah Heights
Project No # 267/24

Objectives	Assessment
(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,	The proposal retains a roof form that is commensurate with that of the retained components of the retained dwelling. The proposed ' additions ' and more specifically the height breach, do not alter the roof form relationship the dwelling will have with either neighbouring properties and or the street.
(b) to control the bulk and scale of buildings,	The extent of height breach while minor and primarily associated with a horizontal roof element at the upper dwelling level, is numerically exacerbated when measured against the excavated ground levels of the land which are not a clear representation of the site's topography. When measured against the natural and better representative land topography, a wholly compliant building height is observed. The overall proportions of the dwelling are not inconsistent with that deemed appropriate for the site in terms of built form siting, setback and or volume and while a numerical height breach is presented, it will not perceptibly contribute to the bulk and or scale of the dwelling to a degree that would be deemed inconsistent with this objective. More generally, the proposal maintains and further incorporates staggered facades, building recesses and the use of a variety of materials and detailing, to provide a highly articulated built form of contemporary external appearance. This design response ensures that the perceptible volume of the development, most notably the breaching component, will not be identified as an adverse contribution to bulk but rather, will continue to facilitate for the provision of a contextually compatible design outcome.
(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),	The siting, scale and relationship the breach will have with neighbouring properties will not give rise to any disruption in view attainment and or impacts.



Statement of Environmental Effects
14 Bareena Drive, Balgowlah Heights
Project No # 267/24

(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,	In terms of overshadowing, the shadowing analysis prepared by HA S which forms part of the architectural plan detail set relied upon in preparation of this variation request (Issue P4-dated 10 September 2024), demonstrates that the extent of additional shadowing impact resulting from the breach, is not unreasonable and does not adversely prejudice the extent of available solar access to the neighbouring properties and or public areas located proximate to the dwelling on the subject land.
(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.	This objective is not relevant to this development.

4.2.2 Clause 4.6(3)(b) – Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

Clause 4.6(3)(b) of MLEP 2013 requires the consent authority to be satisfied that the applicant's written request has adequately addressed that clause, by demonstrating:

"that there are sufficient environmental planning grounds to justify contravening the development standard."

The environmental planning grounds relied upon in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development, as summarised in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] (NSWLEC 118).

There is an absence of environmental harm arising from the contravention of the development standard and positive planning benefits arising from the proposed development, as outlined in detail above. These include:

- The proposal is consistent with the objectives of the development standard and the objectives for development in the R2 Low Density Residential Zone.
- The height non-compliance is a direct result of the topography of the site and the base garage floor plate which was previously excavated onto the ground. As can be seen in the Section A-A drawing forming part of the architectural plan detail prepared by HA S, there is a sharp drop off natural topography of the site and this co-incides with where the height breach begins to occur. Despite the minor height breach, the proposed dwelling additions continue to respond to and respect the natural landform. The proposed variation to the height is deemed a necessary outcome to allow for a well resolved and functional floor plate arrangement offering high levels of residential



Statement of Environmental Effects
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amenity. The height breach will result in no adverse impacts on adjoining properties in terms of visual bulk, views, privacy or overshadowing.

- The location and design of the height breaching element has been organised to ensure that they do not present as visually jarring to the streetscape and in addition, do not result in any adverse level of amenity impact on neighbouring properties.
- The element which breaches the height does so largely as a result of the sites topography which as observed, displays a slope from the rear towards the street. This slope was again exacerbated by the previously undertaken site excavation works which have created a further topographical disparity that now has a direct influence on the extent of numerical height breach.
- Prior excavation of the site and the consequent distortion of the height of buildings plane over the site, when compared to the topography, is an environmental planning ground sufficient to justify contravening the development standard. The site's topography and characteristics distinguish this case from the more generic development for which a numeric standard of this kind inevitably must anticipate.
- The proposed development, notwithstanding non-compliance with the height development standard not only is an orderly and economic use and development of the land, but also promotes good design and amenity of the built environment.
- There is no planning purpose to be served by limiting the height strictly to the maximum height allowable given the site constraints and absence of unreasonable levels of amenity related impacts.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed non-compliance with the height of buildings standard in this instance.

The Objects of the Environmental Planning & Assessment Act 1979 ('EP&A Act') under Section 1.3 of that Act are also relevant to whether grounds exist to warrant a variation. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in the table below we consider whether the proposed development is consistent with each object.

The objects of the EP&A Act and how this proposal responds to each of the objects are detailed as follows:

Object	Comment
<i>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</i>	This object is not relevant to this development.
<i>To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment</i>	The proposal will facilitate an ecologically sustainable development given that no negative impact on environmental and social considerations will arise. This in turn will serve to offer the ongoing sustainment of the economic health of the area.



Statement of Environmental Effects
14 Bareena Drive, Balgowlah Heights
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<i>To promote the orderly and economic use and development of land</i>	The proposed development will promote the orderly and economic use of the land by way of providing a land use typology and intensity, consistent with that envisaged by Council.
<i>To promote the delivery and maintenance of affordable housing</i>	This object is not relevant to this development.
<i>To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats</i>	Given the nature and character of the urban setting the proposed development is located within, no impact on threatened species or ecological communities is likely to result.
<i>To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)</i>	This object is not relevant to this development
<i>To promote good design and amenity of the built environment</i>	The proposed development promotes good design in that it serves to provide a built form and massing arrangement that serves to positively influence the future amenity of the dwelling occupants while adopting an architectural form and language, with an overall silhouette, height and land use intensity compatible with both the established and emerging development and housing typology.
<i>To promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants</i>	The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants.
<i>To promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State</i>	This object is not relevant to this development
<i>To provide increased opportunity for community participation in environmental planning and assessment</i>	This proposed development has been publicly notified in accordance with Council's Community Engagement Strategy/DCP.

Based on the above, the consent authority can be satisfied that the proposed development remains consistent with the Objects of the Act despite the height non-compliance.



Statement of Environmental Effects
14 Bareena Drive, Balgowlah Heights
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4.2.3 Clause 4.6(4) – The consent authority must keep a record of its assessment carried out under subclause (3).

Northern Beaches Council has a current Clause 4.6 register. Any record of this development and its address of subclause (3) will be required to be uploaded on this register.



Statement of Environmental Effects
14 Bareena Drive, Balgowlah Heights
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5. CONCLUSION

For the reasons set out in this written request, strict compliance with the height of buildings development standard contained within clause 4.3 of MLEP 2013 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the height of buildings development standard to the extent proposed, for the reasons detailed within this submission and as summarised below:

- Compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the proposed development.
- The proposal, notwithstanding the non-compliance, is consistent with the objectives of the height of buildings standard.
- There are sufficient environmental planning grounds to justify the contravention.
- There is an absence of any environmental impacts arising from the proposed variation.
- The proposed non-compliance with the height of buildings standard will not result in any matter of significance for State or regional environmental planning

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the height of buildings development standard should be applied.

ITEM 3.4	DA2024/1501 - 90 BRIGHTON STREET FRESHWATER - SUBDIVISION OF ONE LOT INTO TWO, DEMOLITION WORKS AND CONSTRUCTION OF TWO DWELLING HOUSES INCLUDING SWIMMING POOLS
-----------------	---

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 DA2024/1501 for Subdivision of one lot into two, demolition works and construction of two dwelling houses including swimming pools on land at Lot 11 DP 14450, 90 Brighton Street FRESHWATER, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2025/146719
Attachments	1 Assessment Report 2 Subdivision, Site Plan and Elevations 3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1501
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 11 DP 14450, 90 Brighton Street FRESHWATER NSW 2096
Proposed Development:	Subdivision of one lot into two, demolition works and construction of two dwelling houses including swimming pools
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:	Velray Pty Ltd

Application Lodged:	12/11/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	19/11/2024 to 03/12/2024
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 3.08%
Recommendation:	Approval

Estimated Cost of Works:	\$ 3,248,141.00
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EXECUTIVE SUMMARY

This development application seeks consent for demolition of existing structures, subdivision of the existing lot into two lots, and construction of two detached dwelling houses (one on each new proposed lot) with a shared driveway.

The application is referred to the Development Determination Panel (DDP) due to the number of submissions in objection (8).

Concerns raised in the objections predominantly relate to loss of amenity (visual privacy, solar access

and views), excessive bulk and scale and undersized lots, and environmental impacts (excavation and tree removal).

Detailed assessment is provided within this report with respect to the proposed variations to the minimum subdivision lot size development standard for both proposed Lots 1 and 2 (each being undersized by 13.9m² or 3.08%), and with respect to the elements of built form non-compliance, namely wall height, side boundary envelope, and lot width. The request to vary the minimum subdivision lot size development standard arises as the requirement to exclude the area of the proposed access handle from the calculation of lot size. If this exclusion was not applicable, the lots would be of compliant area and width. The non-compliance with the wall height and side boundary envelope controls arises predominantly due to the topography of the land.

Detailed assessment is also provided with respect to the amenity concerns raised. The proposed development is acceptable with respect to visual privacy, subject to some amendments by way of recommended conditions of consent. The proposed development is demonstrated to be compliant with respect to solar access of adjoining properties, in accordance with the requirements of the Warringah Development Control Plan 2011. The proposed dwelling house on Lot 1 will result in moderate view loss to 92 Brighton Street, though this is demonstrably acceptable given the loss is not the result of a non-compliance, given the elements lost are objectively not of substantial value, and given the under-developed nature of the site (meaning the view currently enjoyed by 92 Brighton Street is particularly vulnerable to change).

The assessment finds that the proposed development is consistent with the requirements and/or objectives of the applicable controls of the Warringah Local Environmental Plan 2011 and the Warringah Development Control Plan 2011.

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

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for the following works:

- Demolition of the existing dwelling house and structures on the site,
- Torrens title subdivision of the existing lot into two new lots in battle-axe formation, and
- Construction of two dwelling houses, as follows:
 - Proposed Lot 1:
 - Lower Ground Floor: Double garage, storage for rainwater tanks, bins and bikes, dwelling entryway, stairs and lift,
 - Ground Floor: Living room with balcony, gas fireplace, dining room, kitchen with walk-in pantry, bathroom, laundry, and rumpus room with terrace,
 - First Floor: Main bedroom suite with walk-in robe, ensuite and balcony, as well as three bedrooms, bathroom, and toilet,
 - Roof: Skylights and solar panels, and
 - Swimming pool in the rear yard.
 - Proposed Lot 2:
 - Lower Ground Floor: Double garage, storage for rainwater tanks, bins and bikes, dwelling entryway, stairs and lift,
 - Ground Floor: Living room with balcony, gas fireplace, dining room, kitchen with walk-in pantry, bathroom, laundry, and rumpus room with terrace,
 - First Floor: Main bedroom suite with walk-in robe, ensuite and balcony, as well as three bedrooms, sitting room with a study, and a bathroom,

- Roof: Skylights and solar panels, and
- Swimming pool in the rear yard.
- New shared driveway, and
- Landscaping works.

The above description is in accordance with the amended plans received on 19 February 2025. In accordance with Council's Community Participation Plan, the amended plans did not require re-notification, as they resulted in lesser environmental impact than the originally submitted plans.

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

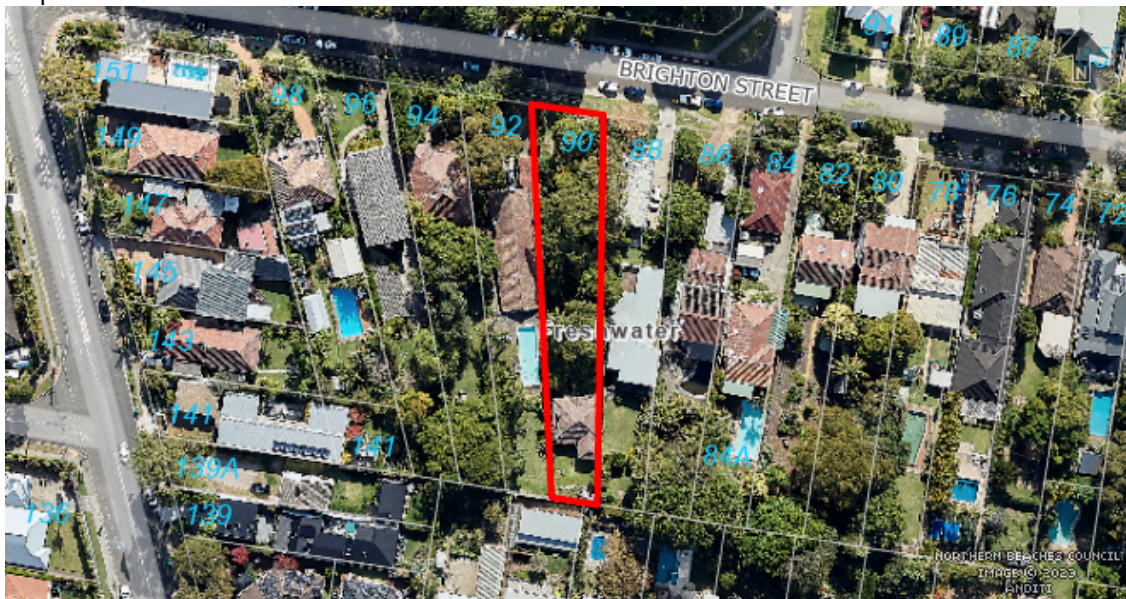
Warringah Local Environmental Plan 2011 - 4.1 Minimum subdivision lot size
 Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - C1 Subdivision
 Warringah Development Control Plan - C7 Excavation and Landfill
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 11 DP 14450 , 90 Brighton Street FRESHWATER NSW 2096
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Detailed Site Description:	The subject site consists of one allotment located on the southern side of Brighton Street, Freshwater. The site is irregular in shape with a frontage of 15.545 metres along Brighton Street and a maximum depth of 83.035 metres. The site has a surveyed area of 1,034m². The site is located within the R2 Low Density Residential zone and accommodates a single-storey detached dwelling house. The site slopes down approximately 11 metres from south (rear) to north (front), and is densely vegetated for the majority of the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by detached dwelling houses, secondary dwellings, and residential flat buildings. To the north of the site, across Brighton Street, is Freshwater Senior Campus.
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Map:



SITE HISTORY

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

- DA2017/0802 for removal of 12 trees was approved by Council on 5 October 2017.

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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the proposed bulk, scale, height and landscaped area. Sufficient information was received on 19 February 2025. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent

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 19/11/2024 to 03/12/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mrs Rachel Ann Akhurst	51 Robert Street FRESHWATER NSW 2096
Mrs Anna Maria Brinkman	84 Brighton Street FRESHWATER NSW 2096
Ms Avril Jean Ciccone	82 Brighton Street FRESHWATER NSW 2096
Mrs Vanessa Leigh Brown	88 Brighton Street FRESHWATER NSW 2096
Vanessa Joyce Mckay	84 A Brighton Street FRESHWATER NSW 2096

Name:	Address:
Lisa Jane Blanch-Rakowski	92 Brighton Street FRESHWATER NSW 2096
Mr Desmond Wilson	1 / 31 Quirk Road MANLY VALE NSW 2093
Alexander Maurice Coxon	53 Robert Street FRESHWATER NSW 2096

The following issues were raised in the submissions:

- The proposed development will unreasonably impact upon visual privacy to 51 and 53 Robert Street, as well as 84A, 88, 88A, and 92 Brighton Street.
- The proposed development will unreasonably impact upon solar access to 88, 88A, and 92 Brighton Street.
- The proposed development will unreasonably obstruct ocean views from 92 Brighton Street.
- The proposed development is excessive in height and bulk, is not compliant with the minimum subdivision lot size, side boundary envelope, or maximum wall height, and is out of character with the area.
- Concern about risk to adjoining properties with respect to the proposed excavation, and about the distance of the swimming pool excavation from the southern boundary.
- Concern about removal of large trees.
- Concern that the proposed development does not provide for compliant open space.

The above issues are addressed as follows:

Amenity - Visual Privacy / Solar Access / View Sharing

Submissions raised concern that the proposed development will unreasonably impact upon:

- Visual privacy to 51 and 53 Robert Street, as well as 84A, 88, 88A, and 92 Brighton Street.
- Solar access to 88, 88A, and 92 Brighton Street.
- Ocean views from 92 Brighton Street.

Comment:

The amenity concerns listed above were raised in submissions made against the original plans submitted for the development application. On 12 December 2024, Council wrote to the Applicant to raise concern with a number of matters, including with respect to amenity. On 19 February 2025, the Applicant lodged amended plans intending to resolve the concerns raised. Assessment in relation to the above matters finds that the proposed development is not unreasonable, as detailed in the sections of this report relating to Parts D6 Access to Sunlight, D7 Views, and D8 Privacy of the Warringah Development Control Plan (WDCP). In short the proposed development is designed to provide compliant solar access, reasonable sharing of views, and reasonable visual privacy to adjoining properties, by way of suitable design.

Height, Bulk and Built Form / Character

Submissions raised concern that the proposed development is excessive in height and bulk, and is not compliant with the minimum subdivision lot size, maximum wall height, or side boundary envelope.

Comment:

The proposed development is compliant with the development standard set out by Clause 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011 (WLEP), as demonstrated by the submitted architectural plans. The proposed development results in variation to the development

standard set out by Clause 4.1 Minimum Subdivision Lot Size of the WLEP. However, the development is demonstrably acceptable despite the non-compliance, as detailed in the sections of this report relating to Clause 4.1 of the WLEP, and C1 Subdivision of the WDCP.

The proposed development is of acceptable bulk and scale as detailed throughout this report, particularly in the sections relating to Parts B1 Wall Height, B3 Side Boundary Envelope, and D9 Building Bulk of the WDCP. In short, the non-compliant elements are acceptable on merit with respect to the underlying objectives of each control.

Given the level of compliance or acceptability with built form controls and consistency with the objectives of the R2 Low Density Residential zone, the proposed development is found to be compatible with the character of the locality.

Excavation

Submissions raised concern about risk to adjoining properties with respect to the proposed excavation, and about the distance of the swimming pool excavation from the southern boundary.

Comment:

The proposed development includes earthworks to create two new dwellings of sufficient area to provide good amenity to the future occupants. The proposed excavation for each dwelling house is minimised in size, being for provision of compliant parking (two car spaces each), and reasonable areas of storage. The excavation is reasonable in the circumstances of the case, and is not anticipated to result in unreasonable landslip risk. Notwithstanding this, conditions of consent have been included in the recommendation of this report requiring adherence to the recommendations of the supporting geotechnical assessment, and requiring the preparation of pre- and post-construction dilapidation reports to keep record of any damage that may occur as a result of the works.

The swimming pool is set at an angle to the southern rear boundary. The eastern edge of the pool is set 700 millimetres from the boundary, and the western edge is set 2 metres from the rear boundary:

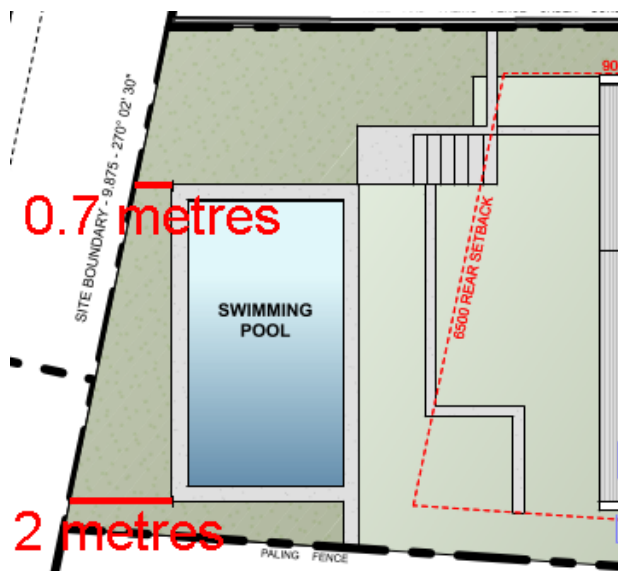


Figure 1 above: The distance of the pool from the southern rear boundary.

Landscaping and Landscaped Open Space

Submissions raised concern about removal of large trees and that the proposed development does not

provide for compliant open space.

Comment:

The proposed development necessitates removal of eight trees, and includes planting of ten trees to offset that tree loss. The proposed development has been reviewed by Council's Landscape Officer, who is supportive of the works (including tree removal), subject to conditions of consent that have been included in the recommendation of this report. The proposed development demonstrates each lot provides landscaped open space in excess of the minimum requirement, as detailed in the section of this report tabulating the Built Form Controls.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<i>Supported without conditions</i> <u>Updated Comment (19 November 2024):</u> Environmental Health has been requested to consider this proposal in regard to the inclusion of a solid fuel heater. The plans accompanying the proposal describe a F.P Flue. Despite this, there are no further details in regard to make, model or specification of the appliance proposed to be installed. Accordingly, Environmental Health is unable to undertake a proper assessment of the solid fuel heater installation. The applicant is also strongly encouraged to consider alternatives to solid fuel appliances (wood fired) due to the potential public health impacts of wood smoke. If the applicant wants to install a Solid fuel heater the information is required as per the lodgement requirement of the DA. No objections to gas fireplaces. <u>Updated Comment (20 February 2025):</u> On 19/02/2025 the applicant provided updated plans which note the fireplace fuel source has been changed to a gas fuel source. Environmental Health raises no objections to gas as a fuel source and supports the proposal.
Landscape Officer	<i>Supported, subject to conditions</i> <u>Original Comment (12 December 2024):</u> <i>The Arboricultural Impact Assessment (AIA) identified 12 trees and of these trees 8 are proposed to be removed. Trees 6 and 10 are</i>

Internal Referral Body	Comments
	<i>exempt by species or height and as such may be managed or removed at the discretion of the applicant without consent. If the application is approved tree removal can be expected due to the narrowness and topography of the site. Trees 4, 5 and 11 are centrally located and have large tree protection zones that would significantly reduce the developable area of the site. The topography of the site, sloping up from north to south, would further impact developable area as excavation and development upslope and in close proximity of trees would likely destabilise the existing root structure. Trees 8, 9 and 12 are low significance and category Z trees which can be easily replaced. Transplanting tree 7 is supported.</i> <i>At this stage landscape referral is unsupportive of the proposal as tree 2 (proposed for retention) will suffer considerable encroachment due to the excavation proposed in its tree protection zone. Up to 900mm will be excavated in the tree protection zone, as shown on drawing DA09 Lot 1 - Section AA, and some form of excavation will occur for majority of the upslope tree protection zone, which will detrimentally impact the tree. It is suggested the 'door to front garden' is removed and existing ground levels are maintained in the tree protection zone of tree 2 (tree 2 must be retained). The AIA states, regarding tree 2, "...The proposed works result in a very minor encroachment within this trees TPZ..." which suggests this excavation has not been assessed or considered.</i> <u>Updated Comment (20 February 2025):</u> The amended reports and plans are noted. Concerns around excavation in the tree protection zone of tree 2 have been resolved and to ensure its protection a Project Arborist shall be engaged to supervise all works in its vicinity. Tree 7 is proposed to be transplanted which is supported and to ensure its survival a Transplanting Methodology Plan shall be prepared and submitted prior to issuing a Construction Certificate. Due to the intensification of the site prescribed tree removal can be expected if the development is approved. The native tree replacement planting shown on the landscape plans will help to offset any canopy loss. The landscape proposal is generally supported and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent. All on slab landscape planters shall meet Council's minimum soil depth requirements. It is noted an on slab planter (lot 1 first floor) has been missed on the landscape plans and appropriate planting shall be selected for this planter.
NECC (Development Engineering)	<i>Supported, subject to conditions</i> <u>Original Comment (15 November 2024):</u> The proposed subdivision has been assessed in accordance with the requirements of Part C1 of the Warringah Development Control Plan.

Internal Referral Body	Comments
	The following clarifications/ amendments are required: 1. The minimum shared driveway width and easement for services shall be 3.5 metres, clear of any obstructions including retaining walls. 2. 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. This is shown on the subdivision plan but is contradicted on the Master Plans. Passing bays should have regard to sight conditions and minimise vehicular conflict. <u>Updated Comment (25 February 2025):</u> Amended plans addressing development engineering concerns have been provided. Development engineering raises no further objections to the proposed development, subject to conditions.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

Housing and Productivity Contribution

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

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

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

Comment:

The subject site is sited within the Greater Sydney region. The proposed development is for demolition of the existing dwelling house, Torrens title subdivision of the land, and construction of two new dwelling houses. As such, the contribution payable is \$12,000.00.

SEPP (Sustainable Buildings) 2022

BASIX certificates for the two proposed dwelling houses have been submitted with the application (see Certificate Nos. 1769532S_03 and 1769258S_04 dated 11 February 2025). 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) 2021Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

SEPP (Resilience and Hazards) 2021**Chapter 4 – Remediation of Land**

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

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	Min. 450m ²	Lot 1: 436.1m ²	3.08%	No
		Lot 2: 436.1m ² (597.9m ² incl. handle)	3.08%	No
Height of buildings	Max. 8.5m	Lot 1: Max. 8.3m	-	Yes
		Lot 2: Max. 8.5m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	No (see detail under Clause 4.6 below)
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment**Zone R2 Low Density Residential**

With respect to the variations to the minimum subdivision lot size, the objectives of the R2 Low Density Residential zone are addressed as follows:

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

Comment:

The proposed development supports the housing needs of the community by increasing the housing stock from one dwelling house to two in a reasonably compliant setting.

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

Comment:

Not applicable. The residential use of the site is retained.

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

Comment:

The two proposed new lots and dwelling houses are compatible with the built form and landscaped character of the locality, and are well-designed to provide suitable bulk and scale and compliant landscaped open space.

4.1 Minimum subdivision lot size

With respect to the variations to the minimum subdivision lot size, the objectives of Clause 4.1 are addressed as follows:

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,

Comment:

The proposed development is for subdivision of the existing lot into two lots, each to encompass a detached dwelling house.

The proposed development results in lot sizes that are smaller than the minimum requirement set out by this clause. The lots are only non-compliant because the area of a right of carriageway is excluded from the calculation of lot size per Clause 4.1(3A). If that exclusion did not apply, the lots could be made to be of compliant area and dimensions. Given this is only a technical non-compliance, the proposed new lots will appear of compliant dimensions and area.

The proposed development will appear from the public domain to be of compatible configuration of surrounding lots, as the presentation to Brighton Street remains relatively unchanged. That is, one lot will front to the street and the second lot is set behind to the south. It is noted there are other examples of this configuration in the immediate vicinity, including 88 Brighton Street, which contains a principal dwelling and a secondary dwelling, and 84 and 84A Brighton Street, being subdivision of the former 88 Brighton Street. Further, higher density exists in the locality,

The resultant lots are compliant with the requirements for subdivision set out in Part C1 Subdivision of the Warringah Development Control Plan, or are demonstrably acceptable on merit, as detailed in the section of this report relating to that control.

Given the above, the proposed development is found to be compatible with the existing residential character of Brighton Street, consistent with the pattern, size and configuration of existing lots in the locality.

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,

(c) to protect the integrity of land holding patterns in rural localities against fragmentation,

(d) to achieve low intensity of land use in localities of environmental significance,

Comment:

Not applicable. The subject site is zoned R2 Low Density Residential and is therefore not environmentally significant.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,

Comment:

Not applicable. The subject site is not classified as bushfire prone land.

(f) to protect and enhance existing remnant bushland,

Comment:

The subject site does not contain or adjoin any remnant bushland. The proposed development is sufficiently landscaped with compliant landscaped open space and tree planting.

*(g) to retain and protect existing significant natural landscape features,
(h) to manage biodiversity,*

Comment:

The subject site does not contain any significant or valuable natural landscape features, nor any flora or fauna species of biodiversity significance. The proposed development will retain the setting and character of the site by inclusion of suitable landscaping of ample dimensions.

(i) to provide for appropriate stormwater management and sewer infrastructure.

Comment:

The proposed development is supported by stormwater plans prepared by a suitably qualified professional, demonstrating stormwater will be sufficiently managed in accordance with Council's Water Management for Development Policy. Council's Development Engineer has reviewed the development application, including the stormwater plans, and is supportive of the proposed works subject to conditions of consent, which have been included in the recommendation of this report.

4.6 Exceptions to development standards

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

Development standard: Clause 4.1 Minimum Subdivision Lot Size

Requirement: Minimum 450m²

Proposed: Two lots at 436.1m² per lot

Percentage of variation: 3.08%

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the WLEP 2011 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.1 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 4.1 is unreasonable or unnecessary in the circumstances of this application because it is consistent with the objectives of Clause 4.1 and the R2 Low Density Residential zone, despite the non-compliance. Assessment of those objectives is provided in the relevant sections of this report.

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

Comment:

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

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

The Clause 4.6 Request argues, verbatim:

"I confirm that both proposed Lots have an area of 436.10m² a shortfall of 13.9m² or 3%. Both Lot sizes are exclusive of the area of the shared access handle.

The variations are quantitatively and qualitatively appropriately described as minor.

Consistent with the findings of Commissioner Walsh in Eather v Randwick City Council [2021] NSWLEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [202] NSW LEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

It is noted that in Initial Action, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning

outcome than a development that complies with the development standard.

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

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.1 in accordance with the above. The proposed development is an orderly and economic use and development of the land, and the two proposed dwelling houses are of good design that will reasonably protect and improve the amenity of the surrounding built environment. As such, the proposed development satisfied Objects 1.3(c) and (g) of the EPA Act.

Public Interest:

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

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the WLEP 2011.

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.

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*

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

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

6.4 Development on sloping land

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) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and

Comment:

The Applicant has submitted a geotechnical assessment report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

Comment:

The Applicant has submitted a geotechnical assessment report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment:

The Applicant has submitted a geotechnical assessment report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or

effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Proposed Lot 1				
Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall height	Max. 7.2m	Max. 7.8m	8.33%	No
B3 Side Boundary Envelope	5m	E: Max. 1.3m Outside Envelope	18.57%	No
		W: Within Envelope	-	Yes
B5 Side Boundary Setbacks	Min. 900mm	E: Min. 1m	-	Yes
		W: Min. 1m	-	Yes
B7 Front Boundary Setbacks	Min. 6.5m	Min. 6.5m	-	Yes
B9 Rear Boundary Setbacks	Min. 6m	Min. 6m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	Min. 40% (174.44m ²)	48.45% (211.3m ²)	-	Yes

Proposed Lot 2				
Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall height	Max. 7.2m	Max. 8.6m	19.44%	No
B3 Side Boundary Envelope	5m	E: Max. 500mm outside envelope	7.7%	No
		W: Max. 800mm Outside Envelope	12.9%	No
B5 Side Boundary Setbacks	Min. 900mm	E: Min. 1m	-	Yes
		W: Min. 1.1m	-	Yes
B7 Front Boundary Setbacks	Min. 6.5m	Min. 6.5m	-	Yes
B9 Rear Boundary Setbacks	Min. 6m	Min. 8m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	Min. 40% (174.44m ²)	45.88% (200.1m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B9 Rear Boundary Setbacks	Yes	Yes
C1 Subdivision	No	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
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

The proposed development includes maximum wall heights of 7.8 metres to the eastern elevation of Lot 1, and 8.6 metres to the eastern elevation of Lot 2, where the control allows for a maximum of 7.2 metres. The non-compliance occurs as a result of a cross-fall of the site down towards the east. The western elevation of each proposed dwelling is compliant with the maximum wall height control.



Figure 2 above: The wall height control line is depicted by the red line. The portions of the development breaching the wall height control on the eastern elevation of Lot 1, highlighted in yellow above the red line.



Figure 3 above: The wall height control line is depicted by the red line. The portions of the development breaching the wall height control on the eastern elevation of Lot 2, highlighted in yellow above the red line.

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 portions of the proposed development that are non-compliant with the wall height are at the uppermost level, due to the sloping topography of the site, with the crossfall down to the east. The walls in question are compliant with the required setback so as not to contribute to unreasonable visual imposition to adjoining properties. As viewed from Brighton Street, the proposed dwelling houses on each lot step backwards as the slope increases, assisting with reduction of the visual bulk of the development.

To ensure development is generally beneath the existing tree canopy level

Comment:

The proposed development is compliant with the maximum building height development standard, and

is set below the general height of canopy trees.

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

Comment:

The proposed development is designed and sited so as to provide for reasonable sharing of views, as detailed in the section of this report relating to Part D7 Views of the WDCP. The portions of the development that are not compliant with this control do not result in any unreasonable view loss.

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

Comment:

The portions of the development that are not compliant with wall height are well-set into the site, so as not to result in unreasonable amenity or visual bulk impacts to the adjoining properties or streetscape. Detailed amenity assessment is provided in the sections of this report relating to Parts D6 Access to Sunlight, D7 Views, and D8 Privacy of the WDCP.

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

Comment:

The proposed development relies on excavation for each dwelling house, for the purpose of the lower ground level and a small portion of the ground level. The development retains or replicates existing ground levels to the boundaries of the site so as to make that excavation less perceptible, particularly as viewed from Brighton Street. Additionally, the proposed dwelling houses step with the slope of the site to reduce overall height and bulk. As such, the development suitably responds to the site's topography.

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

Comment:

The proposed development employs low-pitched roof designs so as to suitably reduce bulk and scale, remain consistent with the predominant built form character of the locality, and respond well to views from adjoining properties.

B3 Side Boundary Envelope

The proposed development includes variations to the side boundary envelope control of up to 1.3 metres on the eastern elevation of the dwelling on Lot 1, and up to 500 millimetres on the eastern elevation and 800 millimetres on the western elevation of the dwelling on Lot 2.

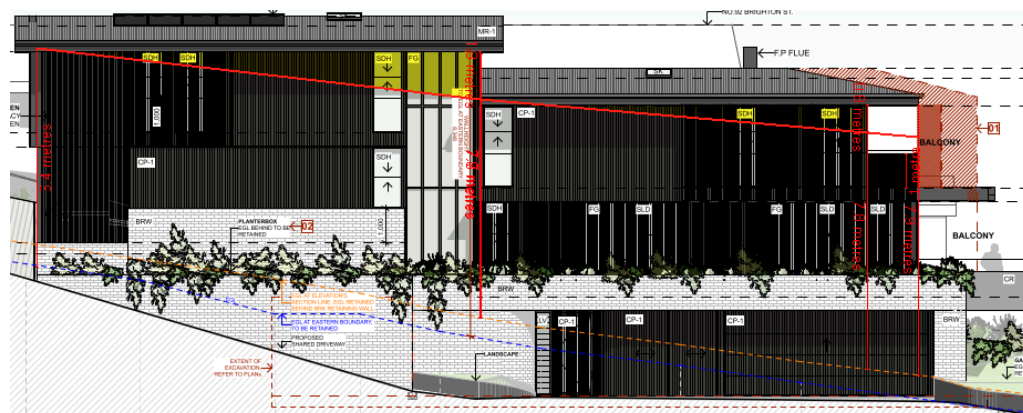


Figure 4 above: The side boundary envelope is depicted by the red line. The portions of the development breaching the envelope on the eastern elevation of Lot 1, highlighted in yellow above the

red line.

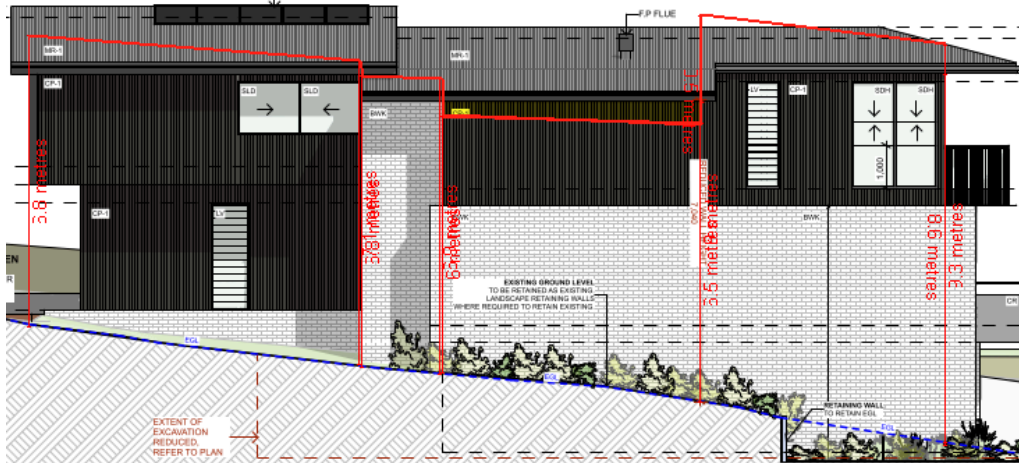


Figure 5 above: The side boundary envelope is depicted by the red line. The portions of the development breaching the envelope on the eastern elevation of Lot 2, highlighted in yellow above the red line.



Figure 6 above: The side boundary envelope is depicted by the red line. The portions of the development breaching the envelope on the western elevation of Lot 2, highlighted in yellow above the red line.

With regard to the consideration for variations, 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 proposed development is designed and sited so as to minimise its visual dominance. The two proposed dwelling houses are compliant with the applicable front, side and rear setbacks, the maximum building height, and the minimum landscaped open space control. This demonstrates that the overarching scale of the development is generally consistent with that anticipated for the site. The development is well-designed so as to provide sufficient internal space for good amenity of the occupants, without resulting in excessive bulk and scale.

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

Comment:

The proposed development is designed in accordance with the privacy requirements and solar access objectives set out in Parts D8 Privacy and D6 Access to Sunlight of the WDCP. Despite the side boundary envelope non-compliance, the proposed development does not give rise to any unreasonable amenity impacts.

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

Comment:

The proposed development relies on excavation for each dwelling house, for the purpose of the lower ground level and a small portion of the ground level. The development retains or replicates existing ground levels to the boundaries of the site so as to make that excavation less perceptible, particularly as viewed from Brighton Street. Additionally, the proposed dwelling houses step with the slope of the site to reduce overall height and bulk. As such, the development suitably responds to the site's topography.

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements R2 Low Density Residential zone requirements:	a) Minimum width: 13 metres	Lot 1: 8.55 - 11.66 metres	No
		Lot 2: 9.875 - 12.4 metres	No
	b) Minimum depth: 27 metres; and	Lot 1: Min. 42.435 metres	Yes
		Lot 2: Min. 38.38 metres	Yes
	c) Minimum building area: 150m ²	Lot 1: 202.5m ²	Yes
		Lot 2: 175m ²	Yes
Access	Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.	Each of the two proposed lots are accessed via a driveway connecting to Brighton Street.	Yes
	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.	Not applicable.	NA
	Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.	Each of the two proposed lots can be accessed for emergency services via the driveway connecting to Brighton Street.	Yes
	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.	The proposed driveway is designed with a compliant gradient.	Yes
	Driveways in excess of 200 metres will not be allowed for residential development.	The proposed driveway is approximately 49 metres in length.	Yes
	Driveways that are 30m or more in length require a passing bay to be	The proposed driveway includes a passing bay of greater than	Yes

	provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.	minimum compliant dimensions.	
	Passing bays should have regard to sight conditions and minimise vehicular conflict.	The proposed passing bay is located so as to provide suitable sight lines to minimise vehicular conflict.	Yes
	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.	The proposed passing bay is located at the vehicular entry point to Lot 1, and a condition of consent is included in the recommendation of this report for creation of a right of carriageway for that area accordingly.	Yes
	Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.	The proposed passing bay is of greater than minimum compliant dimensions, so as to allow for reasonable turning of vehicles.	Yes
	Width of accessway is to be minimum 3.5 metres for a subdivision of 1-5 lots.	The proposed subdivision is for two lots. Accordingly, the proposed driveway is no less than 3.5 metres in width at any point.	Yes
	Provision of services in rights of carriageway is to be a minimum width of 500 millimetres for up to 3 lots.	The proposed subdivision is for two lots. Accordingly, the proposed driveway provides for an easement for services of 500 millimetres in width. A condition of consent is included in the recommendation of this report for creation of an easement for services accordingly.	Yes
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.	The proposed development has been reviewed by Council's Development Engineer, who is supportive subject to recommended conditions of consent.	Yes

	Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.	The proposed subdivision allows for reasonable solar access to the two proposed new lots.	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.	The proposed development has been reviewed by Council's Development Engineer, who is supportive subject to recommended conditions of consent.	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 covenant or like instrument with the Council nominated as a party.	Conditions of consent relating to easements and rights of carriageway have been included in the recommendation of this report.	Yes
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.	The site is classified as Area B on the Landslip Risk Map, being an area of low gradient sloping land. The site is not classified as subject to any other risks or hazards.	Yes
	Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	The subject site is not classified as environmentally constrained. The proposed lot boundaries are suitable for the site.	Yes
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property	Not applicable. The subject site is not classified as bushfire prone land.	Yes

	boundaries of the new subdivision.		
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With regard to the non-compliant minimum lot widths, the development is considered against the underlying objectives of the control as follows:

To regulate the density of development.

Comment:

The proposed development results in lot sizes that are smaller than the minimum requirement set out by Clause 4.1 of the WLEP. The sections of this report relating to Clauses 4.1 and 4.6 of the WLEP demonstrate that the variations to the minimum subdivision lot size are acceptable on merit and are justified. The lots are only non-compliant because the area of a right of carriageway is excluded from the calculation of lot size per Clause 4.1(3A) of the WLEP. If that exclusion did not apply, the lots could be made to be of compliant area and dimensions. Given this is only a technical non-compliance, the proposed new lots will appear of compliant dimensions and area.

Whilst the two proposed lots are also not compliant with the minimum lot width, the lots provide for compliant building height, setbacks, and landscaped area, and a bulk and scale that is acceptable on merit.

Further, the minimum width of the development as it presents to Brighton Street remains unchanged at 15.545 metres. As such, the development will appear from all points as compliant and consistent with the surrounding built form character and pattern of development.

The density of the development is reasonably regulated.

To limit the impact of new development and to protect the natural landscape and topography.

Comment:

The dwelling houses on the proposed new lots rely on excavation for the lower ground floors. The proposed excavation for each dwelling house is minimised in size, being for provision of compliant parking (two car spaces each), and reasonable areas of storage. Accordingly, the proposed development suitably limits the impact on the natural landscape and topography.

To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.

Comment:

The proposed development includes greater than compliant landscaped open space and private open space for each lot. The proposed development also provides suitable arrangements for drainage, services, and vehicular access, as supported by Council's Development Engineer.

To maximise and protect solar access for each dwelling.

Comment:

The proposed development includes dwelling houses designed in such a way to provide reasonable solar access to the two new lots and the adjoining existing lots.

To maximise the use of existing infrastructure.

Comment:

The proposed development maximises the use of existing infrastructure in that it does not create more density than anticipated for the area. As such, the proposed development will not unreasonably

increase the demand on existing services and infrastructure in the locality.

To protect the amenity of adjoining properties.

Comment:

The proposed development is suitably designed with respect to amenity, as detailed throughout this report.

To minimise the risk from potential hazards including bushfires, land slip and flooding.

Comment:

The site is classified as Area B on the Landslip Risk Map, being an area of low gradient sloping land. The site is not classified as subject to any other risks or hazards. The proposed development is supported by a geotechnical assessment that demonstrates the works are of acceptably low risk with respect to landslip.

C7 Excavation and Landfill

The excavation for the purpose of the proposed dwelling houses on proposed Lots 1 and 2 is compliant with the requirements of this control. The excavation for each dwelling is for rainwater tank storage, bicycle storage, bin storage, entry lobby lift and stairs, and car parking in accordance with the requirements of Appendix 1 Car Parking Requirements of the WDCP.

D1 Landscaped Open Space and Bushland Setting

The proposed development provides landscaped area for both proposed Lots 1 and 2 in excess of the minimum requirement set by this control (40% of site).

D6 Access to Sunlight

Submissions from 88, 88A, and 92 Brighton Street raised concern that the proposed development will result in unreasonable loss of solar access. The submitted shadow diagrams demonstrate that the proposed development retains compliant solar access to those properties.

D7 Views

The submission from 92 Brighton Street raised concern that the proposed development will result in view loss to their property. The development is considered against the underlying objectives of the control as follows:

To allow for the reasonable sharing of views.

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

The affected views from 92 Brighton Street contain other dwelling houses, substantial vegetation, distant views of Curl Curl Headland, and a distant corridor view to the ocean and its horizon.

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

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

Comment to Principle 2:

The affected views are obtained from the living room, terrace, kitchen, and bedrooms, from standing a standing position, across the eastern side boundary.



Figure 7 above: The view from the living room of 92 Brighton Street, from a standing position, across the eastern side boundary. The light-cladded dwelling visible in the photograph is the secondary dwelling at 88 Brighton Street, beyond the subject site.



Figure 8 above: A zoomed-in view of the corridor to the ocean and its horizon, to the east of 92 Brighton Street.

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:

A substantial portion of the view from 92 Brighton Street will be lost, including the corridor ocean view, as a result of the proposed dwelling house at Lot 1. The impact on the view to 92 Brighton Street as a result of the development is found to be moderate, for the following reasons:

- The majority of the affected view is of other dwelling houses and vegetation, rather than highly valued elements.
- The most highly-valued element, being the corridor view to the ocean, is wholly lost, though is distant and narrow, being very difficult to protect.
- The northern three-quarters of the subject site have not been subject to development to date, indicating the site is under-developed.
- The dwelling house on Lot 1 is generally compliant with applicable built form controls, including height. The only ways to retain the view for 92 Brighton Street in any substantial manner would be to develop the lot for the purpose of only one dwelling located more centrally on the existing lot, or to delete the first floor of the dwelling house on Lot 1. These options are not reasonable with respect to the development potential of the site, nor the applicable building controls. The dwelling house on Lot 1 is generally of a scale and location anticipates for this land by the applicable controls, so there should be a general level of expectation that the views currently enjoyed are vulnerable to change.

It should be noted that the existing outlook to the north and north-east of 92 Brighton Street will

remain unaffected. Given the full height and width glazing to the northern and eastern elevation of the living room at No. 92, ample natural light and amenity will be retained.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

It is understood the dwelling house on Lot 1 is not compliant with the maximum wall height and side boundary envelope controls. However, these non-compliant elements are on the eastern elevation only, being opposite side of the subject site to 92 Brighton Street. As such, it is clear those non-compliant elements are not the cause of the view loss described above. As above, there is not a more skilful design that would provide the Applicant with the same development potential and amenity, while also retaining the views. As such, the proposed dwelling house on Lot 1 is reasonable in its context, despite the impact to 92 Brighton Street.

To encourage innovative design solutions to improve the urban environment.

Comment:

The proposed development is innovative in its design in that it provides good internal amenity for the occupants of the two proposed dwellings, while not resulting in unreasonable impacts to adjoining properties.

To ensure existing canopy trees have priority over views.

Comment:

The proposed development does not rely on unreasonable removal of canopy trees.

D8 Privacy

The density of the site is increased from containing one dwelling house in its existing form to two in the proposed form. Further, submissions from the occupants of 51 and 53 Robert Street, and 84A, 88, 88A, and 92 Brighton Street raised concern that the proposed development will unreasonably impact upon visual privacy to those properties. It is noted 84A Brighton Street is three properties to the east of the subject site and is not anticipated to be unreasonably impacted by the proposed development, given the substantial separation.

A detailed assessment of the proposed development with reference to the requirements of this control is provided as follows.

The requirements of D8 Privacy are:

1. *Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.*
2. *Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.*
3. *The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass*
4. *The windows of one dwelling are to be located so they do not provide direct or close views (i.e. from*

less than 9 metres away) into the windows of other dwellings.

5. Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.

Comment:

The proposed development is well-designed with respect to layout so as to optimise privacy for occupants of the subject site and adjoining sites.

Proposed Lot 1: Adjoining 88A Brighton Street to the east and the dwelling house of 92 Brighton Street to the west.

The lower ground floor is predominantly excavated into the ground, and its designed for non-habitable purposes, including car parking and storage. As such, no privacy impact arises from this level.

The ground floor is comprised of a living room with balcony dining room, kitchen with walk-in pantry, bathroom, laundry, and rumpus room with terrace:

- On the northern elevation, the dwelling is fitted with a balcony adjoining the living room. The balcony is reasonable in its context, given its placement at the front of the site, orientated to the street. In this location, there is little expectation for privacy, adjoining the public domain.
- On the eastern elevation, windows are provided to the living room, between the dining room and kitchen, to the stairwell, and at the hallways either side of the stairwell. The windows to the living room, dining room, kitchen and north of the stairwell do not give rise to direct viewing to 88A Brighton Street, as they are fitted with privacy screening battens to their full height. The windows to the stairwell and hallways are addressed below.
- On the western elevation, windows are provided to the living room, walk-in pantry, bathroom, and rumpus room, plus a window and door to the laundry. Like the eastern elevation, the windows to the living room do not give rise to direct viewing to 92 Brighton Street, as they are fitted with privacy screening battens to their full height. The windows and door to the laundry, pantry and bathroom are not considered to give rise to unreasonable visual privacy impacts as their associated room uses are not habitable or frequented, and the windows are offset from windows of the dwelling house at 92 Brighton Street. The window to the rumpus room is designed so as to be reasonable with respect to visual privacy, as it is partially below existing ground, and well-screened by proposed landscaping.
- On the southern elevation, sliding glass doors are provided to the rear terrace, set with generous physical separation to proposed Lot 2 (minimum 10.1 metres, at a lower land level). The terrace is fitted with full-height privacy screening to the eastern and western elevations, and is set in compliance with the rear setback control.
- In the rear yard, the swimming pool is set into the existing ground level, so is designed such that it does not result in unreasonable overlooking.

The first floor is comprised of the main bedroom suite with walk-in robe, ensuite and balcony, as well as three bedrooms, a bathroom, and a toilet:

- On the northern elevation, the dwelling is fitted with a balcony adjoining the main bedroom. As at the ground floor, the balcony is reasonable in its context, given its placement at the front of

the site, orientated to the street. In this location, there is little expectation for privacy, adjoining the public domain.

- On the eastern elevation, windows are provided to the main bedroom, the stairwell and at the hallways either side of the stairwell, and at the hallway adjoining the third and fourth bedrooms. Like the ground floor, the windows to the main bedroom and the hallway adjoining the third and fourth bedrooms do not give rise to direct viewing, as they are fitted with privacy screening battens to their full height. The windows to the stairwell and hallways are addressed below.
- On the western elevation, windows are provided to the main bedroom suite's ensuite and walk-in robe, at the hallway beyond the planter box, and each of the three additional bedrooms. The windows to all four bedrooms do not give rise to direct viewing, as they are fitted with privacy screening battens to their full height. The window to the hallway beyond the planter box is reasonably designed in its context, given the physical separation to 92 Brighton Street (3.8 metres to the side boundary, and given it is offset from other windows.
- On the southern elevation, windows are provided to the fourth bedroom and the hallway. These windows do not give rise to direct viewing, as they are fitted with privacy screening battens to their full height.

It is noted that the eastern windows to the stairwell extend from the ground floor finished floor level up to the first floor ceiling height (see Figure 9). These windows are set a minimum of 5.7 metres from the boundary that adjoins 88 Brighton Street, separated by the proposed driveway. The stairs are configured such that two of the three flights of stairs are set away from the window, thereby adding further physical separation. The windows to the hallways either side of the stairwell are set a minimum of 5.6 metres from the boundary that adjoins 88 Brighton Street, separated by the proposed driveway (see Figure 9). Two of the three windows in question are set from finished floor level to ceiling level. Whilst there is substantial separation between the stairwell and hallway windows, the cumulative impact of the area of glazing gives rise to substantial opportunity for overlooking. A condition of consent has been included in the recommendation of this report requiring translucent glazing to a portion of these windows.

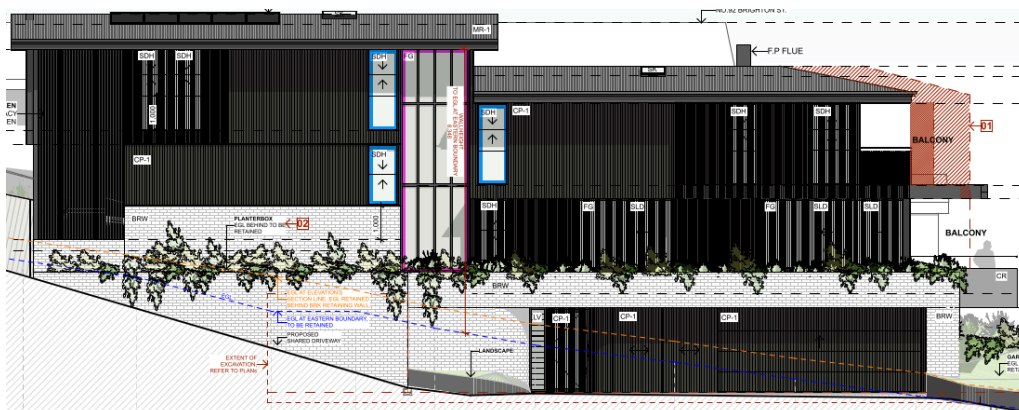


Figure 9 above: The eastern elevation of the proposed dwelling house on Lot 1. The windows to the stairwell (outlined in pink) and the windows to the hallways adjoining the stairwell (outlined in blue).

Proposed Lot 2: Adjoining 88 Brighton Street to the east, the rear yard of 92 Brighton Street to the west, and 51 and 53 Robert Street to the south-east.

The lower ground floor is designed in much the same way as at Lot 1. As such, no privacy impact arises from this level.

The ground floor is comprised of a living room with balcony, dining room, kitchen with walk-in pantry, bathroom, laundry, and rumpus room with terrace:

- On the northern elevation, the dwelling is fitted with a balcony adjoining the living room. The balcony is reasonably designed, in that it includes solid walls to the majority of the eastern and western elevations, directing view north across proposed Lot 1. The level of the balcony is approximately 500 millimetres higher than the level of the pool coping at 92 Brighton Street, set behind the existing boundary fence (approximately 1.8 metres in height adjoining the pool at 92 Brighton Street). The balcony is set a minimum of 4.5 metres from 88 Brighton Street to the east. Given the design, the similarity in levels and the existence of the fence, the balcony will not give rise to unreasonable overlooking.
- On the eastern elevation, a window is provided to the rumpus room only. This window is set 3.3 metres from 88 Brighton Street and view from this window is obscured by the existing boundary fence adjoining No. 88.
- On the western elevation, windows are provided to the living room and rumpus room, plus a window and door to the laundry. As at Lot 1, the windows to the living room do not give rise to direct viewing to 92 Brighton Street, as they are fitted with privacy screening battens to their full height. The window and door to the laundry are not considered to give rise to unreasonable visual privacy impacts as their associated room use is not habitable or frequented. The window to the rumpus room is designed so as to be reasonable with respect to visual privacy, as it is partially below existing ground, well-screened by proposed landscaping, with view to the west obscured by the existing boundary fence adjoining 92 Brighton Street.
- On the southern elevation, sliding glass doors are provided to the rear yard, set with generous physical separation to the properties to the south (minimum 10.4 metres, at a lower land level). A louvred window faces the southern elevation, and appears on the southern elevation plan to be immediately at the rear of the dwelling house. It should be noted that this window is instead adjoining the stairwell and is set 20 metres from the southern boundary, posing no unreasonable visual impact.
- In the rear yard, the swimming pool is set into the existing ground level, so is designed such that it does not result in unreasonable overlooking.

The first floor is comprised of the main bedroom suite with walk-in robe, ensuite and balcony, as well as three bedrooms, sitting room with study, and a bathroom:

- On the northern elevation, the dwelling is fitted with a balcony adjoining the main bedroom (see Figure 10). The balcony is 1.4 metres in depth and 4 metres in width, totalling 5.7m² in area. The trafficable portion of the balcony is set 4.5 metres from the eastern side boundary, and 3.4 metres from the western side boundary (separated by a void space). Given the physical separation, the modest dimensions, and that the adjoining room is one with low waking-use (bedroom), the balcony is not wholly unreasonable with respect to privacy. However, given the balcony sits above the level of the adjoining boundary fences and would allow some view to the windows of 88 Brighton Street and the private open space 92 Brighton Street, benefit for those properties would be gained from inclusion of privacy screening to the eastern and western elevations of the balcony. It is recommended that the screening be to a height of 1.5

metres above the finished floor level of the balcony, given the angle of view to those properties is quite low, and considering the level of separation to adjoining lots. This has been included as a recommended condition of consent.

- On the eastern elevation, windows are provided to the main bedroom, and at the study. The windows to the main bedroom are set a minimum of 4 metres from the eastern side boundary, adjoining 88 Brighton Street. In conjunction with the physical separation, the difference in levels between the first floor of the proposed dwelling house at Lot 2 means that views will generally be out and over 88 Brighton Street, rather than down to the rear yard. The study windows are set a minimum of 2.2 metres from the eastern side boundary, adjoining the rear yard of 88 Brighton Street. The plans demonstrate a built-in study desk adjoining this window, indicating users of the window would be sitting. From a seated position, view out of the study window would be out and over 88 Brighton Street to the east, so is not anticipated to provide unreasonable view to that property's rear yard.
- On the western elevation, windows are provided to the main bedroom suite's ensuite and walk-in robe, the bathroom, and each of the three additional bedrooms. The windows to all four bedrooms do not give rise to direct viewing, as they are fitted with privacy screening battens to their full height. The window to the bathroom is set 1.2 metres from the western boundary (see Figure 10). Given the non-habitable room use, the requirement for the bathroom window to be fitted with translucent glazing via a recommended condition of consent is found to be reasonable.
- On the southern elevation, windows are provided to the fourth bedroom and the sitting room. These windows do not give rise to direct viewing, as they are fitted with privacy screening battens to their full height. As at the ground floor, a louvred window faces the southern elevation, and appears on the southern elevation plan to be immediately at the rear of the dwelling house. It should be noted that this window is instead adjoining the stairwell and is set 20 metres from the southern boundary, posing no unreasonable visual impact.

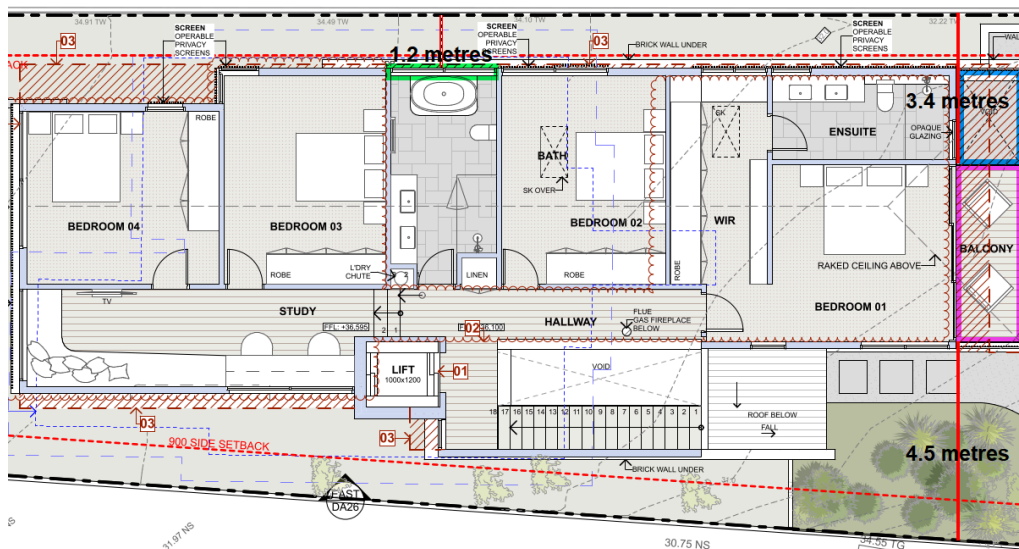


Figure 10 above: The first floor plan of the proposed dwelling house on Lot 2, showing the balcony (outlined in pink), the void adjoining the balcony (outlined in blue), the bathroom window (outlined in green), and the distances from the eastern and western side boundaries.

Subject to the recommended amendments described above, in accordance with the objectives of this control, the proposed development will:

- *ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours,*
- *encourage innovative design solutions to improve the urban environment, and*
- *provide personal and property security for occupants and visitors.*

D9 Building Bulk

The density of the site is increased from containing one dwelling house in its existing form to two in the proposed form. Further, submissions raised concern that the proposed development is of excessive bulk, and relies on unreasonable excavation. A detailed assessment of the proposed development with reference to the requirements of this control is provided as follows.

The requirements of D9 Building Bulk are:

1. Side and rear setbacks are to be progressively increased as wall height increases.

Comment:

For each dwelling house on the two proposed new lots, the eastern side setback increases as the wall height increases, towards the north. The western side and southern rear setbacks are generally the same for the ground and first floors, though these elevations demonstrate compliance with the wall height and building envelope controls, so do not present unreasonable bulk.

2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.

Comment:

The proposed development includes reasonable wall presentations. The eastern elevations of each dwelling are articulated with varied setbacks and building materials. The western setbacks include architectural features that create interest and prevent a large wall plane. Both dwelling houses step with the topography of the land, so as not to create a boxy visual presentation.

3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:

- *The amount of fill is not to exceed one metre in depth.*
- *Fill is not to spread beyond the footprint of the building.*
- *Excavation of the landform is to be minimised.*

Comment:

The proposed development relies on excavation for each dwelling house, for the purpose of the lower ground level and a small portion of the ground level. The extent of excavation is to a maximum depth of 3.6 metres for Lot 1 and 2.9 metres for Lot 2. The development retains or replicates existing ground levels to the boundaries of the site so as to make that excavation less perceptible, particularly as viewed from Brighton Street. The proposed development is also supported by a geotechnical assessment, which demonstrates the proposed excavation is of acceptably low risk, subject to recommendations that have been included in the recommended conditions of consent.

4. Building height and scale needs to relate to topography and site conditions.

Comment:

The proposed development demonstrates compliant building height for each dwelling house. The

required excavation is acceptable with respect to the topography as detailed above at (3). Additionally, the proposed dwelling houses step with the slope of the site to reduce overall height and bulk. As such, the development suitably responds to the site's topography.

5. Orientate development to address the street.

Comment:

Both dwelling houses on the two proposed new lots are orientated to the north, towards Brighton Street.

6. Use colour, materials and surface treatment to reduce building bulk.

Comment:

The proposed development is supported by a materials board, with finishes depicted on the submitted elevation plans for each dwelling house. The result is logical use of colours, materials and treatments to reduce the visual impact of the development. Darker colours and natural materials are used for the highest portions of the two dwelling houses, so as to reduce their visual prominence.

7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.

Comment:

The proposed development demonstrates compliant landscaped open space for each new lot, and sufficient planting in logical locations so as to reduce and soften the visual impact of the built form. The existing ground level is retained to the front of the site adjoining Brighton Street, to reduce the prominence of the development from the public domain.

8. Articulate walls to reduce building mass.

Comment:

The proposed development employs architectural techniques to introduce modulation and articulation to the elevations of each dwelling house. This includes increased setbacks, timber screening, and varied materials and finishes.

Given the above, the proposed development is consistent with the requirements of this control, and demonstrates acceptable bulk and scale.

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 \$32,481 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,248,141.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation

submitted by the applicant and the provisions of:

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify variation of the development standard contained within Clause 4.1 Minimum Subdivision Lot Size 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 report details the proposed development, being for demolition of existing structures, subdivision of the existing lot into two lots, and construction of two detached dwelling houses (one on each new proposed lot) with a shared driveway.

The application was referred to the Development Determination Panel (DDP) due to the number of submissions in objection (8).

Concerns raised in the objections predominantly related to loss of amenity (visual privacy, solar access and views), excessive bulk and scale and undersized lots, and environmental impacts (excavation and tree removal).

Detailed assessment was provided within this report with respect to the proposed variations to the minimum subdivision lot size development standard for both proposed Lots 1 and 2 (each being

undersized by 13.9m² or 3.08%), and with respect to the elements of built form non-compliance, namely wall height, side boundary envelope, and lot width. The assessment report details the reasons the non-compliant elements are acceptable on merit.

Detailed assessment is also provided with respect to the amenity concerns raised. The proposed development is acceptable with respect to visual privacy, solar access and view sharing, as detailed in the relevant sections of this report.

The assessment report has detailed that the proposed development is consistent with the requirements and/or objectives of the applicable controls of the Warringah Local Environmental Plan 2011 and the Warringah Development Control Plan 2011.

Overall, the development is a high quality design and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The development application 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 4.1 Minimum Subdivision Lot Size, pursuant to Clause 4.6 of the Warringah Local Environmental Plan 2011 because the Applicant’s written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/1501 for Subdivision of one lot into two, demolition works and construction of two dwelling houses including swimming pools on land at Lot 11 DP 14450, 90 Brighton Street, FRESHWATER, 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

DA03	F	Subdivision Plan	Watershed Architects	17 February 2025
DA04	F	Demolition Plan	Watershed Architects	17 February 2025
DA05	F	Site & Roof Plan	Watershed Architects	17 February 2025
DA06	F	Lot 1 - Lower Ground Floor Plan	Watershed Architects	17 February 2025
DA07	F	Lot 1 - Ground Floor Plan	Watershed Architects	17 February 2025
DA08	F	Lot 1 - First Floor Plan	Watershed Architects	17 February 2025
DA09	F	Lot 1 - Section AA	Watershed Architects	17 February 2025
DA10	F	Lot 1 - Section BB	Watershed Architects	17 February 2025
DA11	F	Lot 1 - Section CC	Watershed Architects	17 February 2025
DA12	F	Lot 1 - Section DD	Watershed Architects	17 February 2025
DA13	F	Lot 1 - Elevation North	Watershed Architects	17 February 2025
DA14	F	Lot 1 - Elevation South	Watershed Architects	17 February 2025
DA15	F	Lot 1 - Elevation East	Watershed Architects	17 February 2025
DA16	F	Lot 1 - Elevation West	Watershed Architects	17 February 2025
DA17	F	Lot 2 - Lower Ground Floor Plan	Watershed Architects	17 February 2025
DA18	F	Lot 2 - Ground Floor Plan	Watershed Architects	17 February 2025
DA19	F	Lot 2 - First Floor Plan	Watershed Architects	17 February 2025
DA20	F	Lot 2 - Section EE	Watershed Architects	17 February 2025
DA21	F	Lot 2 - Section FF	Watershed Architects	17 February 2025
DA22	F	Lot 2 - Section GG	Watershed Architects	17 February 2025
DA23	F	Lot 2 - Section HH	Watershed Architects	17 February 2025
DA24	F	Lot 2 - Elevation North	Watershed Architects	17 February 2025
DA25	F	Lot 2 - Elevation South	Watershed Architects	17 February 2025

DA26	F	Lot 2 - Elevation East	Watershed Architects	17 February 2025
DA27	F	Lot 2 - Elevation West	Watershed Architects	17 February 2025
DA28	F	Site Section	Watershed Architects	17 February 2025
DA29	F	Excavation and Fill Plan	Watershed Architects	17 February 2025
DA30	F	Sediment & Erosion Plan	Watershed Architects	17 February 2025
1 of 6	F	Landscape Site Plan	Paul Scrivener Landscape	13 February 2025
2 of 6	F	Lot 1 Ground Floor Detail Plan	Paul Scrivener Landscape	13 February 2025
3 of 6	F	Lot 2 Ground Floor Detail Plan	Paul Scrivener Landscape	13 February 2025
4 of 6	F	Lot 1 Elevations	Paul Scrivener Landscape	13 February 2025
5 of 6	F	Lot 2 Elevations	Paul Scrivener Landscape	13 February 2025
6 of 6	F	Notes	Paul Scrivener Landscape	13 February 2025
4266	C	Plan of Proposed Subdivision	CMS Surveyors	13 February 2025
STORM-1/A	A	Stormwater Management Plan	Taylor Consulting	10 February 2025
STORM-2/A	A	Erosion and Sediment Control Plan	Taylor Consulting	10 February 2025
STORM-3/A	A	Stormwater Management Details	Taylor Consulting	20 February 2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Arboricultural Impact Assessment and Method Statement	-	Ezigrow	24 October 2024
BASIX Certificate 1769532S_03	-	Green Future Group	11 February 2025
BASIX Certificate 1769258S_04	-	Green Future Group	11 February 2025
Geotechnical Investigation	J5537	White Geotechnical Group	18 October 2024

Geotechnical DDD Addendum	J5537A	White Geotechnical Group	11 February 2025
NatHERS Certificate 9822750-02	-	Green Future Group	11 February 2025
NatHERS Certificate 9822743-02	-	Green Future Group	11 February 2025
NatHERS Thermal Comfort and BASIX Assessment (Lot 1)	B	Green Future Group	11 February 2025
NatHERS Thermal Comfort and BASIX Assessment (Lot 2)	B	Green Future Group	11 February 2025
Waste Management Plan	-	Applicant	Undated

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	9 December 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 two approved lots as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011, as follows:

Dwelling house means a building containing only one dwelling.

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

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

4. Prescribed Conditions

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

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

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

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention

- to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. General Requirements

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

- ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$32,481.41 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 \$3,248,141.00.

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the

provision of new or augmented local infrastructure and services.

7. Security Bond

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

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

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

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

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

8. 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	\$ 12,000.00
Strategic Biodiversity Component and/or Transport Project Component	\$0
Total:	\$12,000.00

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

highest PPI number

consent PPI number

where—

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

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

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

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

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

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

4. The HPC must be paid using the NSW planning portal (<https://pp.planningportal.nsw.gov.au/>).
5. If the Minister administering the Environmental Planning and Assessment Act 1979 agrees, the HPC (apart from any transport project component) may be made, instead of as a monetary contribution, in the following ways:
 - a) the dedication or provision of land for the purpose of regional infrastructure in the region in which the development will be carried out,
 - b) the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out.

If the HPC is made partly as a monetary contribution, the amount of the part payable is the amount of the part adjusted in accordance with condition 2 at the time of payment.
6. Despite condition 1, a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the Environmental Planning and Assessment Act 1979 to the

development, or the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023 exempts the development from the contribution. The amount of the contribution may also be reduced under the order, including if payment is made before 1 July 2025.

Reason: Statutory requirement.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. On Slab Landscape Works

a) details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections.

b) The following soil depths are required to support planting: 300mm for groundcovers, succulents and grasses; and 600mm for shrubs.

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

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

10. Transplanting Methodology Plan

a) a Transplanting methodology plan, prepared by an Arborist with AQF minimum Level 5 qualifications in arboriculture, shall be documented to demonstrate the requirement for transplanting tree 7 - *Livistona australis*, including:

- i) preparation of the palm to be transplanted,
- ii) transplanting methodology and installation works,
- iii) post-transplanting care and duration,
- iv) ongoing maintenance program,
- v) replacement strategy if transplanting fails in the long term.

b) the Transplanting methodology plan is to be submitted to the Certifier for approval prior to issue of a Construction Certificate.

Reason: Tree protection.

11. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Taylor Consulting, drawing number: Storm 1/A, Storm 2/A, Storm 3/A, dated 20.02.2025. 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 on-site detention system shall:

1. Provide a minimum of 11,900 litres of detention storage.
2. Provide a minimum of two (2) grated access points for access and ventilation.
3. Provide access steps in accordance with Council's Water Management for Development Policy.

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

13. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/6 MH in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

14. **Amendments to the Approved Plans**

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

- Windows on the eastern elevation of the dwelling house on Lot 1 are to be amended as follows:
 - The window adjoining the stairwell (W2.01) is to be of translucent glazing from its lowest sill to a minimum height of RL 32.10.
 - The two first-floor windows either side of the stairwell (W3.02 and W2.02) are to have a minimum sill height of 1 metre above their corresponding finished floor levels.
- The western window to the first floor bathroom in the dwelling house on Lot 2 is to be fitted with translucent glazing.
- The northern balcony adjoining the first floor main bedroom of the dwelling house on Lot 2 is to be fitted with privacy screening to the eastern and western elevations. The screening is to be constructed of louvres fixed in place and angled to prevent direct

viewing to 88 Brighton Street to the east and 92 Brighton Street to the west, spaced such that the gaps between louvres are no more than 20 millimetres in width. The screening is to be to a minimum height of 1.5 metres above finished floor level of the balcony.

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.

15. **Boundary Identification Survey**

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

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

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

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

16. **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.

17. **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.

18. **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

19. **Project Arborist**

a) 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 AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

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

i) tree protection measures and works under sections 4 Arboricultural Method Statement and Appendix 8 Tree Management Plan.

c) All tree protection measures specified 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.

d) the Project Arborist shall provide certification to the Certifier that all tree protection measures under AS 4970-2009 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.

20. **Tree Removal Within the Property**

a) this consent approves the removal of existing prescribed trees on the subject site as listed below:

i) tree 4 - *Eucalyptus botryoides*, tree 5 - *Eucalyptus robusta*, tree 8 - *Melaleuca quinquenervia*, tree 9 - *Glochidion ferdinandi*, tree 11 - *Syncarpia glomulifera*, and tree 12 *Glochidion ferdinandi*.

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.

21. **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).

- 88 Brighton Street, Freshwater (including the principal dwelling and the secondary dwelling)
- 92 Brighton Street, Freshwater
- 52 Robert Street, Freshwater
- 53 Robert Street, Freshwater (including the principal dwelling and the secondary dwelling)

The reports must detail the physical condition of those properties listed, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

The dilapidation reports are to be prepared by a suitably qualified person. A copy of each 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.

22. **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

23. 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 AS 4970-2009 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 AS 4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS 4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS 4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause 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.

c) the Principal Certifier must ensure that:

- i) If activated, the arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

24. 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.

25. **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.

26. **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.

27. **Property Boundary Levels**

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

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

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

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.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

29. **Street Tree Planting**

a) street tree planting shall be installed in accordance with the following:
i) as shown on the approved landscape plans.

b) all street trees shall be a minimum pre-ordered planting size of 75 litres, and shall meet the requirements of AS2303 – Tree Stock for Landscape Use. All street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, including a four post and top and mid rail timber tree guard, and watered until established, and shall be generally located at least 2.0 metres from driveways, and shall generally be centralised within the road verge.

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

Reason: to maintain environmental and streetscape amenity.

30. **Landscape Completion**

a) landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawings 2 of 6 and 3 of 6 issue F by Paul Scrivener dated 13/02/25), 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) all native tree planting shall be a minimum pre-ordered planting size of 75 litres (except *Leptospermum petersonii*); meet the requirements of AS2303 – Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and located either within garden bed or within a prepared bed within lawn,
- iv) the *Angophora costata* and *Glochidion ferdinandi* in the front setback of lot 1 shall be located at least 3.0 metres from buildings and other trees or more, and at least 1.5 metres from common boundaries,
- 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) 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,
- vii) substitute all *Rhaphiolepis* species with a suitable alternative (although a cultivar is proposed, Council deems this species an environmental threat),
- viii) include appropriate planting species for the on slab planter in lot 1 on the first floor.

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.

31. **Condition of Retained Vegetation**

a) 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:

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

Reason: Tree and vegetation protection.

32. **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.

33. **Post-Construction Dilapidation Report**

Post-construction dilapidation reports of the properties referred to in the Pre-Construction Dilapidation Report condition, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The reports must:

- Compare the post-construction reports with the pre-construction reports,
- 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.

34. **Reinstatement of Kerb**

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

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

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

35. **House Numbers**

House numbers are to be affixed to the dwelling houses and are 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.

36. **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.

37. **Swimming Pool Requirements**

The Swimming Pools 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

38. **Landscape Maintenance**

a) if any landscape materials/components or planting under this consent fails, they are to be

replaced with similar materials/components.

b) 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.

c) if any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

d) a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

e) the approved landscape planted areas, whether containing lawn, gardens or planters 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.

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

The swimming pool / spa motors 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.

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

40. **Easement Creation**

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

The easements are to be detailed on 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: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

41. **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.

42. **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.

43. **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 (including the passing bay).

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.

44. **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.

45. **Restriction as to User (Vehicular Access)**

The Applicant shall create a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) to be incorporated on the title of Lot 1. The restriction shall preclude that lot from utilising its frontage for vehicular traffic except for the section created as a Right of Carriageway. The wording of the restriction of use is to be prepared by a surveyor, with terms acceptable to Council.

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

Reason: To ensure compliance with Council policy for vehicular access.

46. **Certification of On-site Detention System (New Subdivision)**

A 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 on-site stormwater detention system has been constructed in accordance with the approved construction 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 On-site Detention System has been built to the appropriate standard.

47. **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.

48. **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.

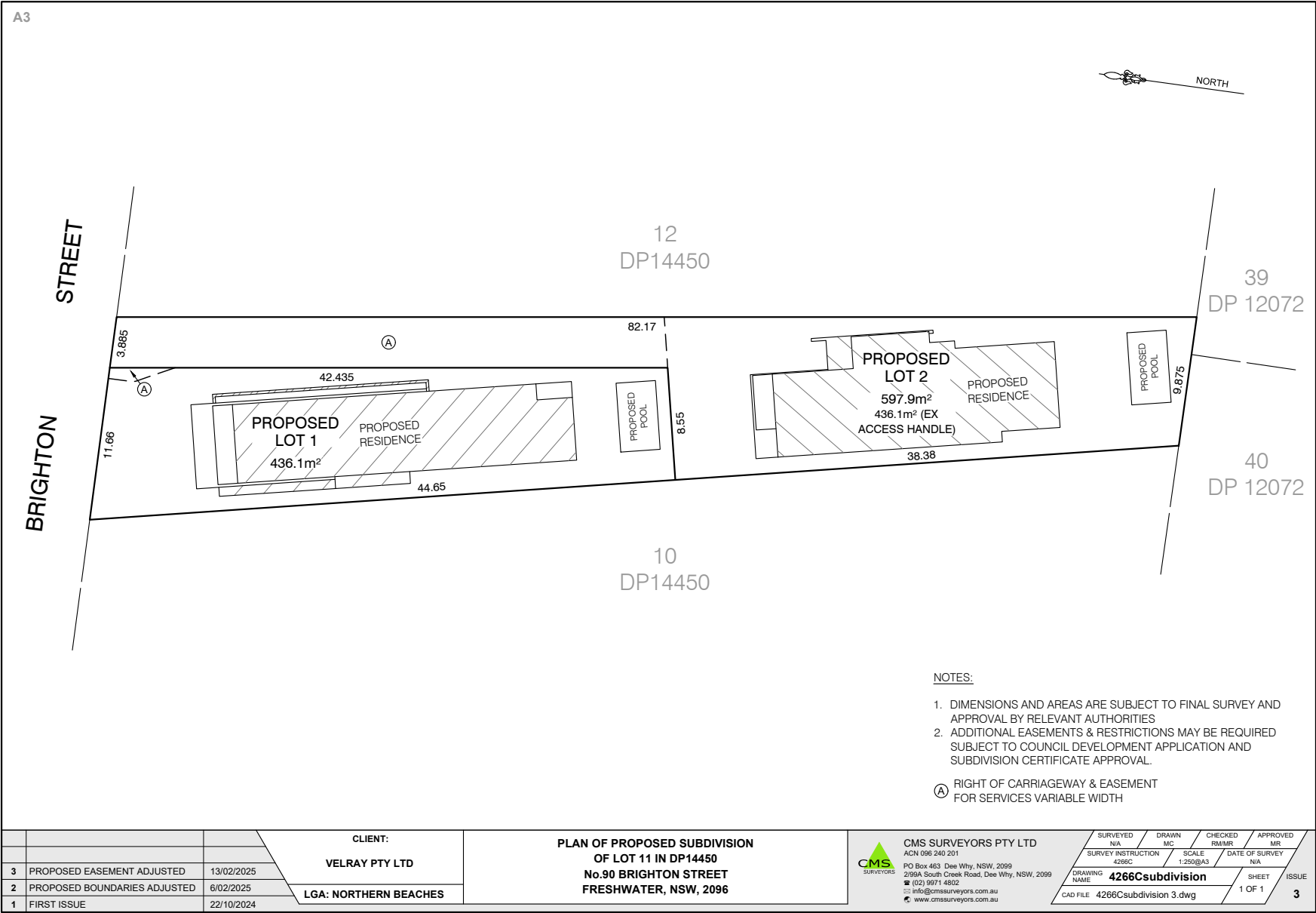
Reason: Statutory requirement of the Conveyancing Act 1919.

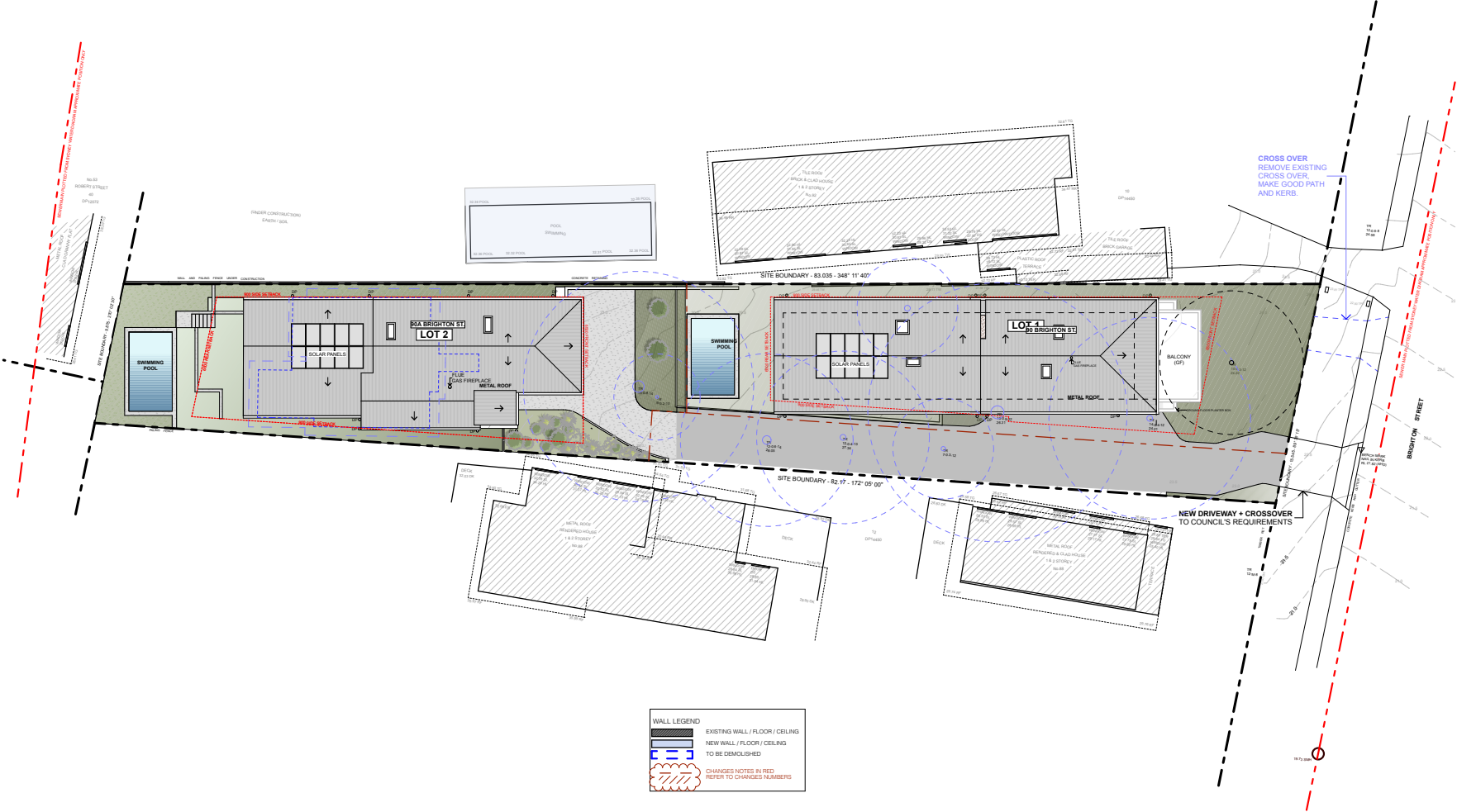
49. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.





Watershed\Architects

Nominated Architect Mark Korgul No. 6221 Studio 9977 1076 Address Level 1, 167 Pittwater Road Manly NSW 2095



ISSUE
F
E
D

FOR
DA APPLICATION - AMENDMENTS
DA AMENDMENT - DRAFT
DA APPLICATION

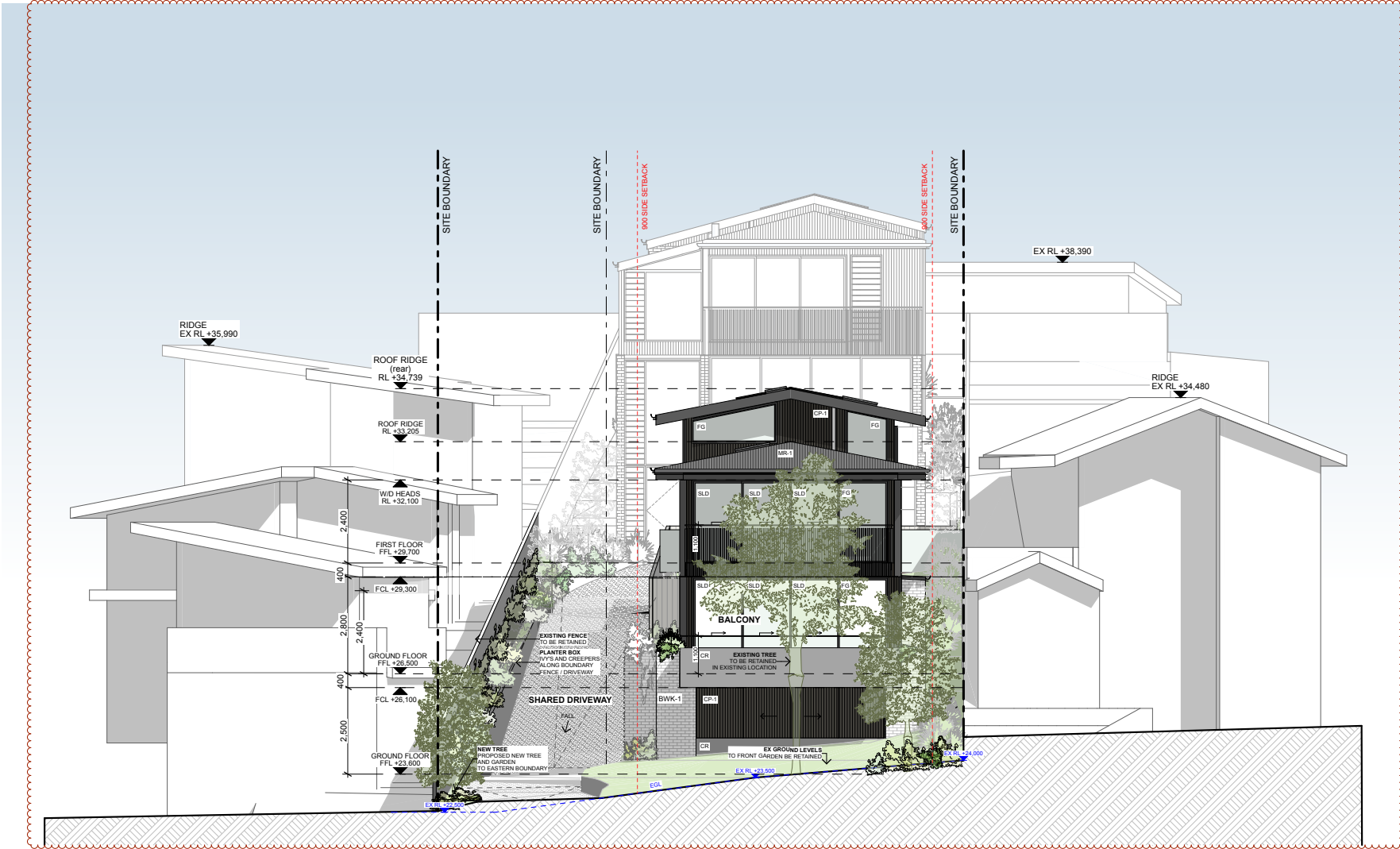
DATE
17/2/2025
11/02/2025
22/10/2024

JOB NO: 24002
ADDRESS: 90 BRIGHTON STREET FRESHWATER
CLIENT: V. GLAVAN
SCALE: 1:250 @ A3

SITE & ROOF PLAN

SHEET: **DA05**

ISSUE: **F**



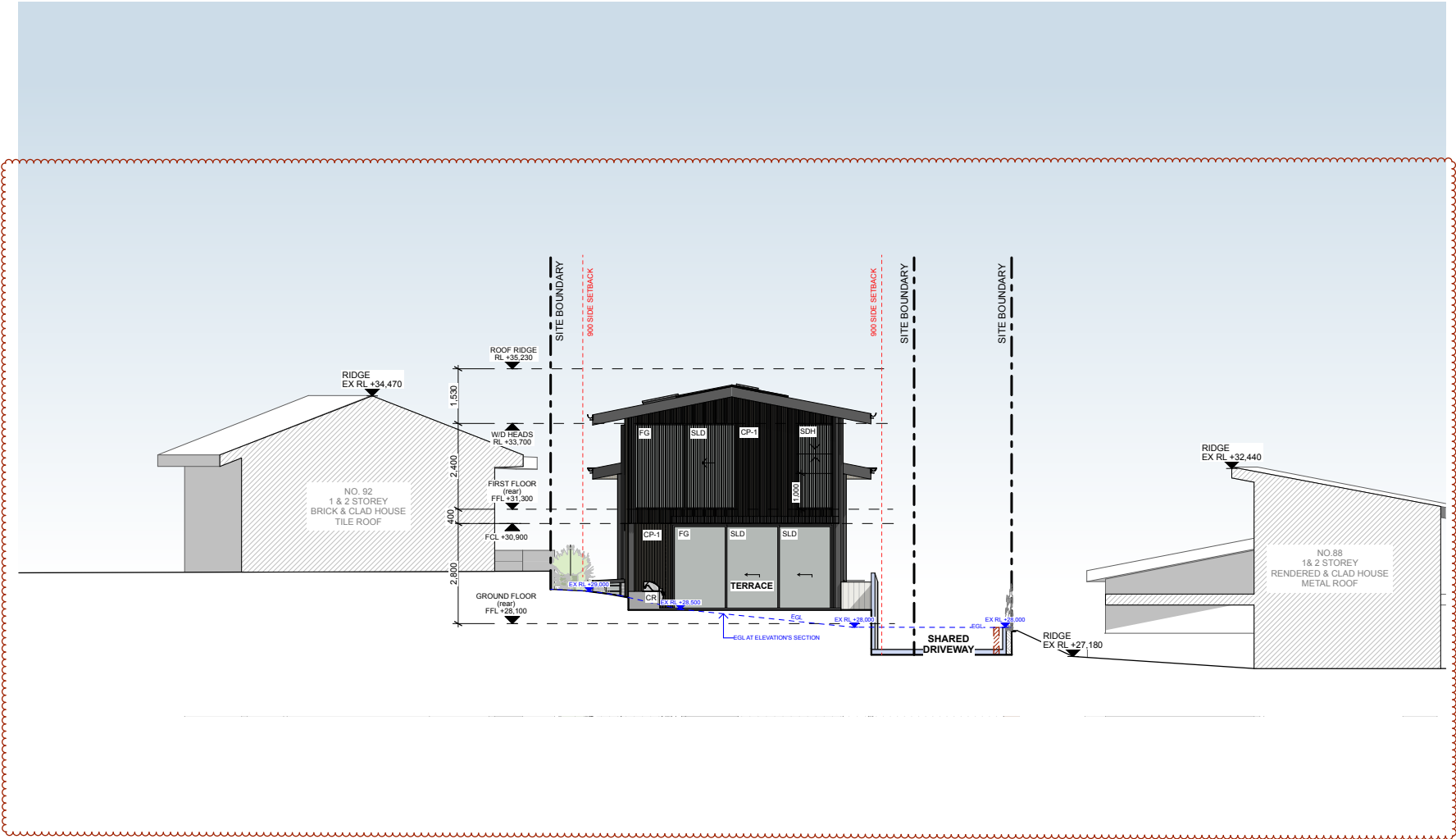
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ISSUE FOR
F DA APPLICATION - AMENDMENTS
E DA AMENDMENT - DRAFT
D DA APPLICATION

DATE JOB NO:
17/2/2025 24002
11/02/2025 ADDRESS: 90 BRIGHTON STREET FRESHWATER
22/10/2024 CLIENT: V. GLAVAN
SCALE: 1:100 @ A3

LOT 1 - ELEVATION NORTH
SHEET: DA13
ISSUE: F



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ISSUE	FOR	DATE	JOB NO:
F	DA APPLICATION - AMENDMENTS	17/2/2025	24002
E	DA AMENDMENT - DRAFT	11/02/2025	ADDRESS: 90 BRIGHTON STREET FRESHWATER
D	DA APPLICATION	22/10/2024	CLIENT: V. GLAVAN
			SCALE: 1:100 @ A3

LOT 1 - ELEVATION SOUTH

SHEET:	DA14
ISSUE:	F



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ISSUE	FOR	DATE	JOB NO:
F	DA APPLICATION - AMENDMENTS	17/2/2025	24002
E	DA AMENDMENT - DRAFT	11/02/2025	ADDRESS: 90 BRIGHTON STREET FRESHWATER
D	DA APPLICATION	22/10/2024	CLIENT: V. GLAVAN
			SCALE: 1:100 @ A3

LOT 1 - ELEVATION EAST
SHEET: DA15
ISSUE: F



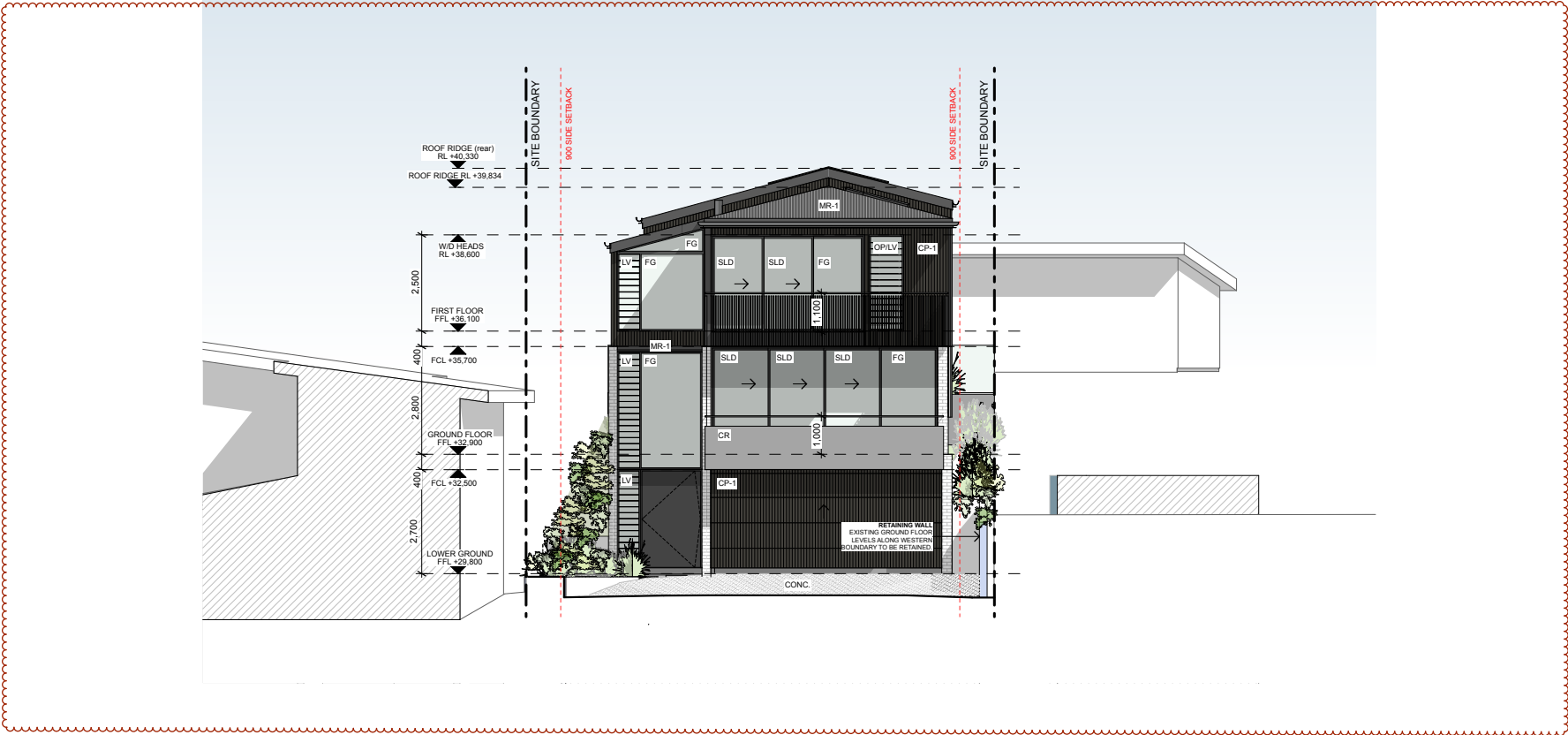
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ISSUE	FOR	DATE	JOB NO:
F	DA APPLICATION - AMENDMENTS	17/2/2025	24002
E	DA AMENDMENT - DRAFT	11/02/2025	ADDRESS: 90 BRIGHTON STREET FRESHWATER
D	DA APPLICATION	22/10/2024	CLIENT: V. GLAVAN
			SCALE: 1:100 @ A3

LOT 1 - ELEVATION WEST

SHEET:	DA16
ISSUE:	F



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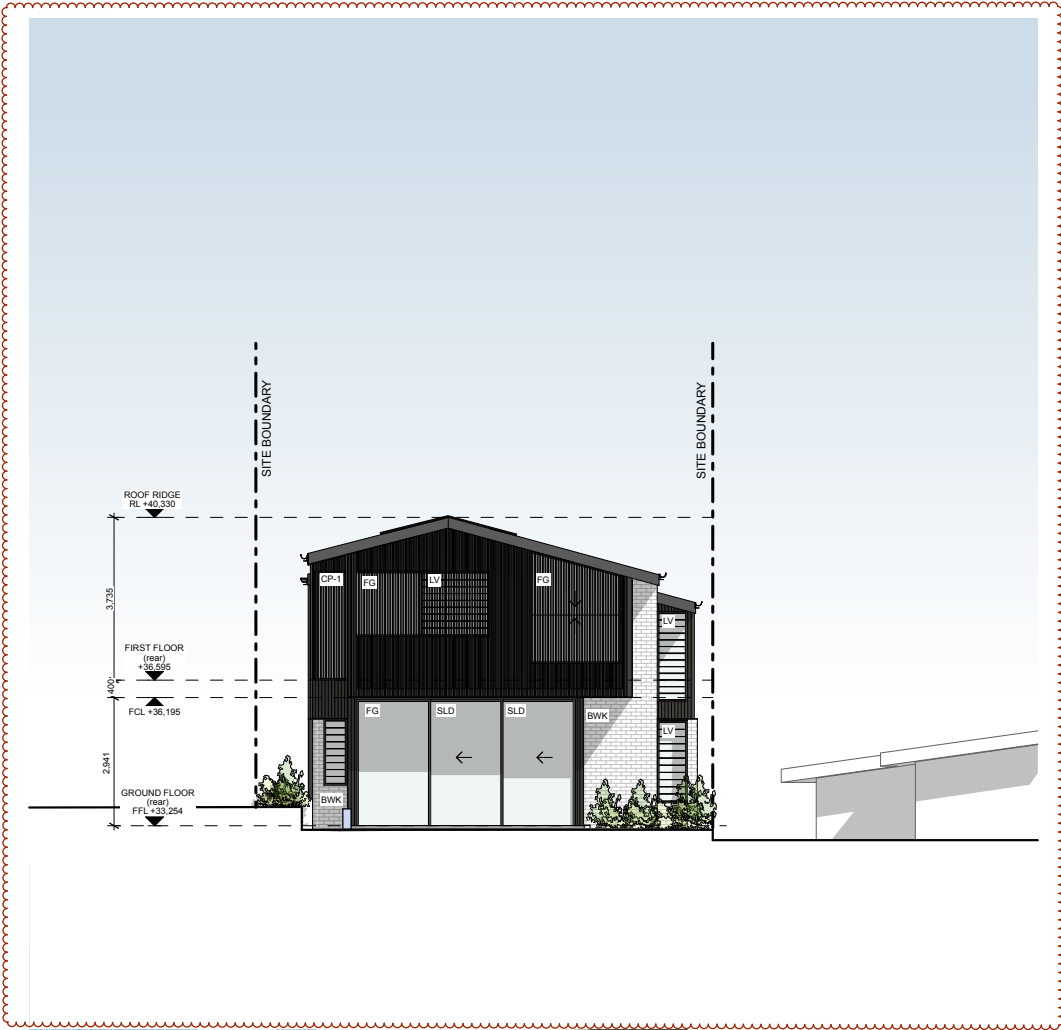
Nominated Architect Mark Korgul No. 6221 Studio 9977 1076 Address Level 1, 167 Pittwater Road Manly NSW 2095

ISSUE FOR
F DA APPLICATION - AMENDMENTS
E DA AMENDMENT - DRAFT
D DA APPLICATION

DATE JOB NO:
17/2/2025 24002
11/02/2025 ADDRESS: 90 BRIGHTON STREET FRESHWATER
22/10/2024 CLIENT: V. GLAVAN
SCALE: 1:100 @ A3

LOT 2 - ELEVATION NORTH

SHEET: DA24
ISSUE: F

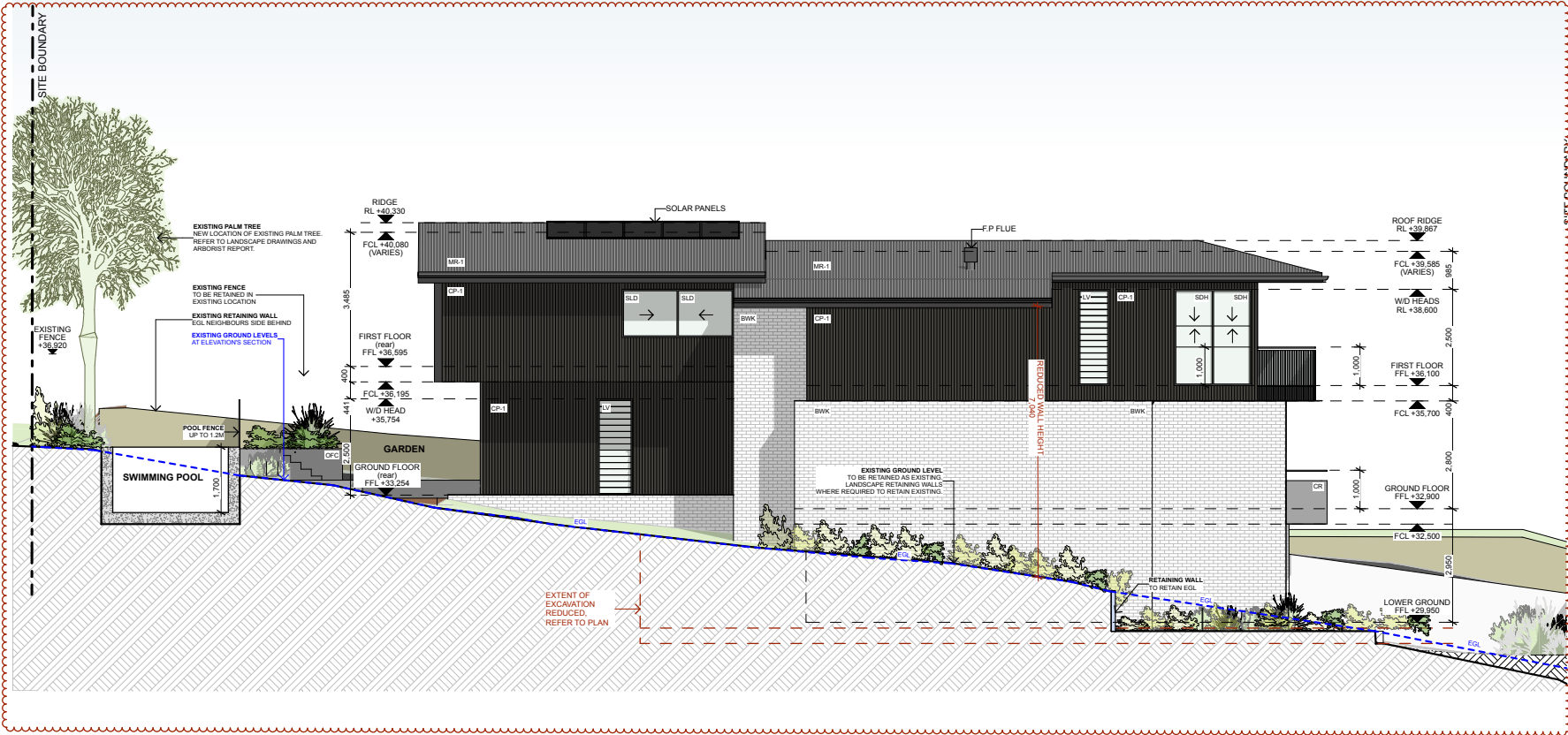


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ISSUE	FOR	DATE	JOB NO:
F	DA APPLICATION - AMENDMENTS	17/2/2025	24002
E	DA AMENDMENT - DRAFT	11/02/2025	ADDRESS: 90 BRIGHTON STREET FRESHWATER
D	DA APPLICATION	22/10/2024	CLIENT: V. GLAVAN
			SCALE: 1:100 @ A3

LOT 2 - ELEVATION SOUTH
SHEET: DA25
ISSUE: F



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ISSUE	FOR	DATE	JOB NO:
F	DA APPLICATION - AMENDMENTS	17/2/2025	24002
E	DA AMENDMENT - DRAFT	11/02/2025	ADDRESS: 90 BRIGHTON STREET FRESHWATER
D	DA APPLICATION	22/10/2024	CLIENT: V. GLAVAN
			SCALE: 1:100 @ A3

LOT 2 - ELEVATION EAST
SHEET: DA26
ISSUE: F

ISSUE: **F**

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18.2.25

DA2024/1501

**Updated clause 4.6 variation request – Minimum subdivision lot size
Subdivision of one lot into two, demolition works and construction of
two dwelling houses including swimming pools
90 Brighton Street, Freshwater**

1.0 Introduction

This updated clause 4.6 variation request has regard to the amended Revision F Architectural plans prepared by Watershed Architects.

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

2.0 Warringah Local Environmental Plan 2011 (WLEP)

2.1 Clause 4.1 - Minimum subdivision lot size

Pursuant to clause 4.1(3) WLEP 2011, the size of any lot resulting from the subdivision on land shall not be less than 450m². In accordance with clause 4.1(3A) the area of the access handle is to be excluded from the calculation of lot size. The objectives of this clause are as follows:

- (a) *to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,*
- (b) *to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,*
- (c) *to protect the integrity of land holding patterns in rural localities against fragmentation,*
- (d) *to achieve low intensity of land use in localities of environmental significance,*
- (e) *to provide for appropriate bush fire protection measures on land that has an interface to bushland,*
- (f) *to protect and enhance existing remnant bushland,*
- (g) *to retain and protect existing significant natural landscape features,*
- (h) *to manage biodiversity,*

- (i) *to provide for appropriate stormwater management and sewer infrastructure.*

I confirm that both proposed Lots have an area of 436.10m² a shortfall of 13.9m² or 3%. Both Lot sizes are exclusive of the area of the shared access handle.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of WLEP provides:

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

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

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

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

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

Clause 4.6(2) of WLEP provides:

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

This clause applies to the clause 4.1 Minimum subdivision lot size development standard.

Clause 4.6(3) of WLEP 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 minimum subdivision lot size provision at clause 4.1 of WLEP which specifies a minimum subdivision lot size however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

3.0 Relevant Case Law

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

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

19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

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

1. Is clause 4.1 of WLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard.

4.0 Request for variation

4.1 Is clause 4.1 of WLEP a development standard?

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

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

Clause 4.1 WLEP prescribes a minimum subdivision lot size standard that relates to certain development. This standard seeks to control the size of residential allotments. Accordingly, clause 4.1 WLEP is a development standard.

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

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

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

Consistency with objectives of the minimum subdivision lot size standard

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

- (a) *to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,*

Response: I note that there are a variety of allotment sizes and geometry within immediate proximity of the site and certainly within the R2 Low Density Residential Zone within the Freshwater locality. The following zoning map extracts demonstrates that the battle-axe subdivision pattern will complement/ will not be antipathetic to the existing subdivision pattern along the length of Brighton Street and within the Freshwater locality generally. Further, the battle-axe dwelling arrangement is consistent with that established by the existing detached dual occupancy development immediately to the east at No. 88 Brighton Street.

The subdivision pattern along the southern side of Brighton Street is irregular in nature with the subdivision pattern comprising a mixture of long single frontage allotments and battleaxe allotments of various areas and configurations as depicted in the following images.

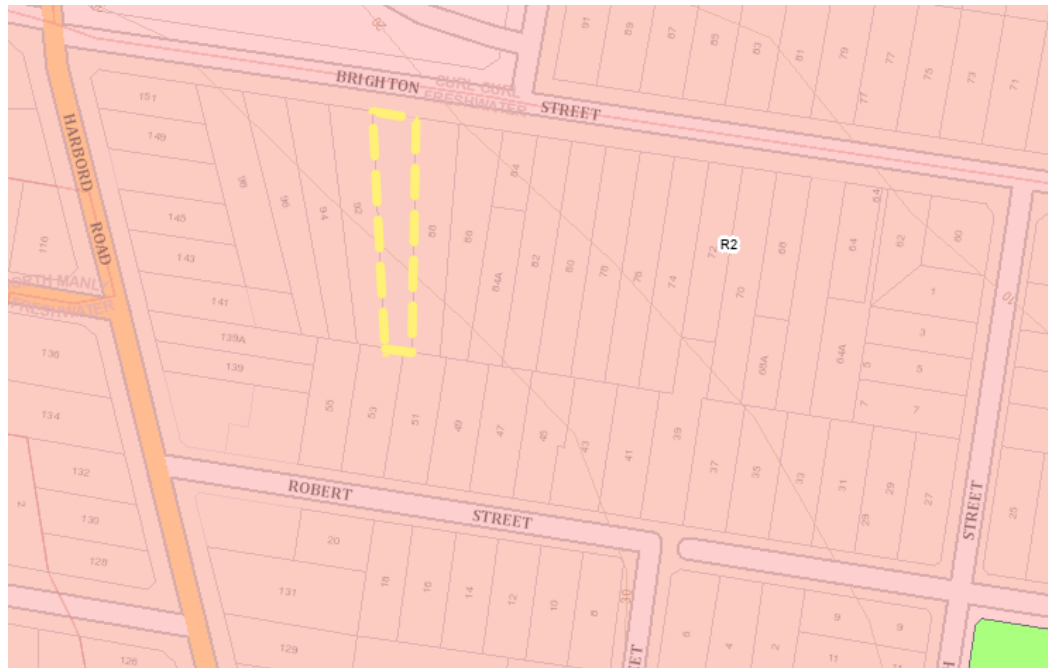


Figure 1: Map extract showing subdivision pattern along Brighton Street between Harbord Road and Waratah Street. Subject site shown in yellow.

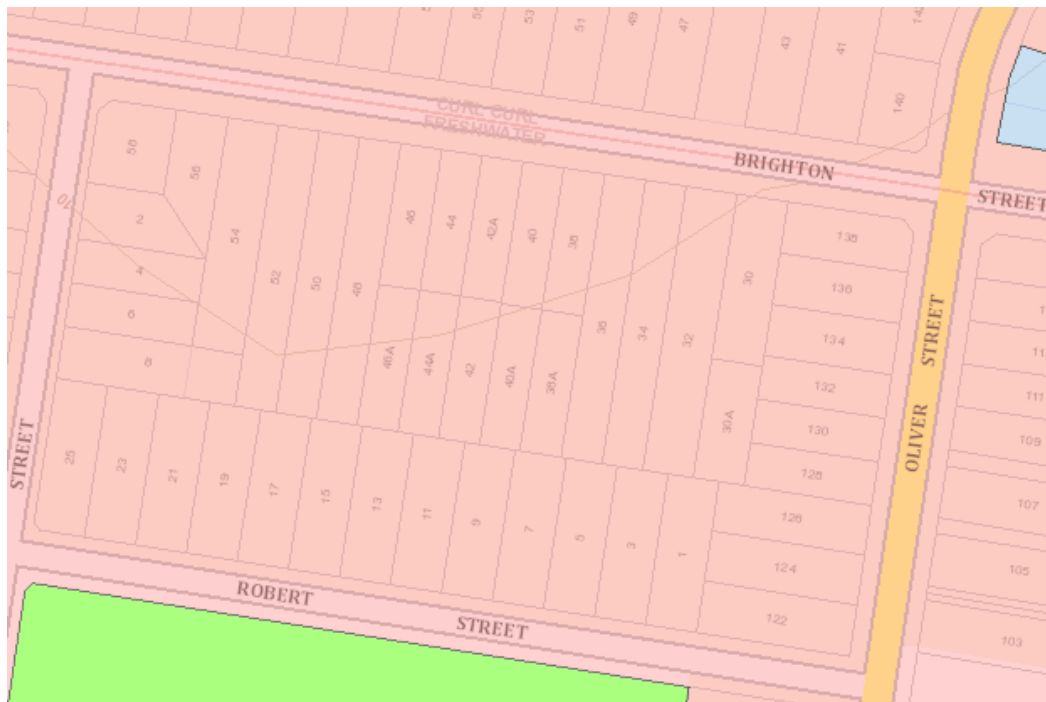


Figure 2: Map extract showing subdivision pattern along Brighton Street between Waratah Street and Oliver Street.

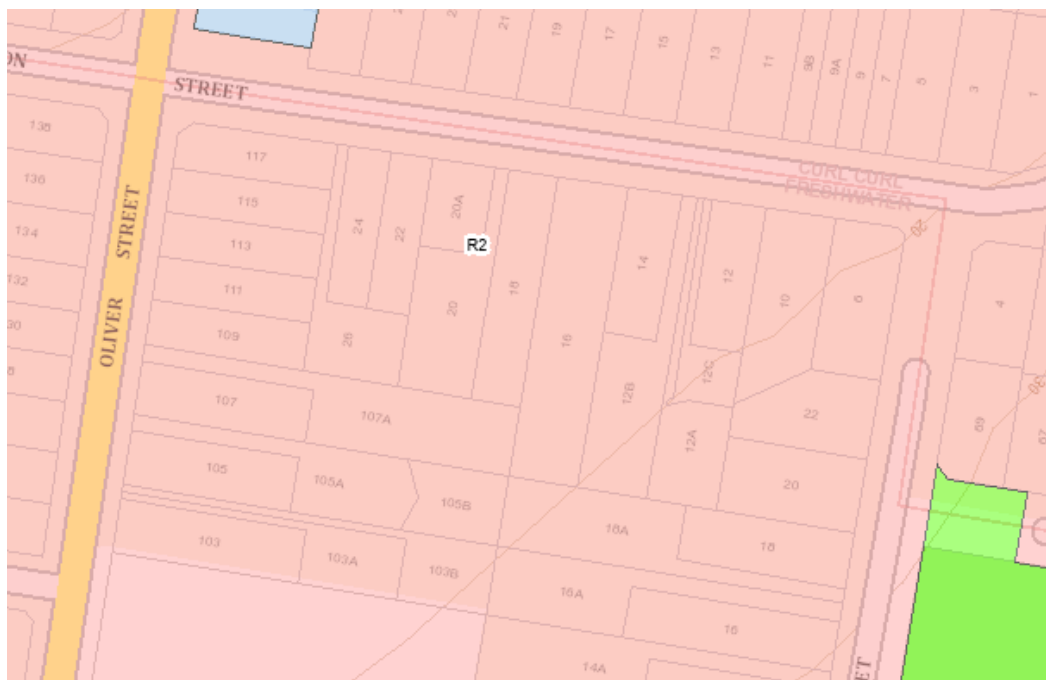


Figure 3: Map extract showing subdivision pattern along Brighton Street between Oliver Street and Park Street.



Figure 4: Map extract showing detached dual occupancy development to the east No. 88 Brighton Street.

Notwithstanding the minor Lot size variation proposed the geometry of the existing lot as viewed from Brighton Street is unaltered with the battle-axe configuration accommodating a single dwelling house presentation to the street consistent with the residential character of dwellings in a streetscape context.

Based on the previous images, I am satisfied that notwithstanding the minor Lot size variations that the resultant Lots are consistent with the pattern, size and configuration of existing lots in the locality and accordingly this objective is achieved.

- (b) *to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,*

Response: N/A. Such land uses are prohibited in the R2 Low Density Residential Zone.

- (c) *to protect the integrity of land holding patterns in rural localities against fragmentation,*

Response: N/A. The property is not within a rural locality.

- (d) *to achieve low intensity of land use in localities of environmental significance,*

Response: The subject property is not within a Conservation Zone and is instead zoned R2 Low Density Residential reflecting the absence of identified environmental significance/ sensitivities. The minor subdivision lot size variation does not prevent consistency with this objective.

- (e) *to provide for appropriate bush fire protection measures on land that has an interface to bushland,*

Response: N/A. The site is not bushfire prone land nor located adjacent to bushland.

- (f) *to protect and enhance existing remnant bushland,*

Response: The existing vegetation on the site is not appropriately described as remnant bushland and accordingly this objective is achieved notwithstanding the minimum subdivision lot size variation proposed.

- (g) *to retain and protect existing significant natural landscape features,*

Response: The minor variation to the minimum subdivision lot size does not prevent attainment of this objective notwithstanding that some impact is unavoidable to realise the orderly and economic use and development of the land.

- (h) *to manage biodiversity,*

Response: The minor variation to the minimum subdivision lot size does not prevent attainment of this objective given that the site is not mapped/ identified as having biodiversity constraints.

- (i) *to provide for appropriate stormwater management and sewer infrastructure.*

Response: The minor variation to the minimum subdivision lot size does not prevent attainment of this objective given that both proposed lots can gravity drain to Brighton Street with sewer available to the existing allotment.

This objective is achieved notwithstanding the non-compliant subdivision lot size proposed.

Having regard to the above, the non-compliant lots sizes 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 minimum subdivision lot size standard. Given the developments consistency with the objectives of the minimum subdivision lot size standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

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

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

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

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

Sufficient environmental planning grounds

Ground 1 - Minor nature of breach and lack of impact

I confirm that both proposed Lots have an area of 436.10m² a shortfall of 13.9m² or 3%. Both Lot sizes are exclusive of the area of the shared access handle.

The variations are quantitatively and qualitatively appropriately described as minor.

Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSWLEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [202] NSW LEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

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

5.0 Conclusion

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

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

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

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

Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

ITEM 3.5 REV2024/0031 - 179 RIVERVIEW ROAD AVALON BEACH - REVIEW OF DETERMINATION OF APPLICATION DA2024/0725 FOR DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE AND ASSOCIATED SITE WORKS

PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **refuses** Development Consent to REV2024/0031 for Review of Determination of Application DA2024/0725 for Demolition works and construction of a dwelling house and associated site works on land at Lot 3 DP 236812, 179 Riverview Road AVALON BEACH, for the reasons for refusal set out in the Assessment Report.

TRIM file ref 2025/146371

Attachments [↓1](#) Assessment Report
 [↓2](#) Site Plan and Elevations

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2024/0031
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Responsible Officer:	Ben Tesoriero, Creative Planning Solutions
Land to be developed (Address):	Lot 3 DP 236812, 179 Riverview Road AVALON BEACH NSW 2107
Proposed Development:	Review of Determination of Application DA2024/0725 for Demolition works and construction of a dwelling house and associated site works
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council (DDP)
Land and Environment Court Action:	No
Applicant:	Madeleine Blanchfield Architects Pty Ltd

Application Lodged:	10/01/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	22/01/2025 to 05/02/2025
Advertised:	Not Advertised
Submissions Received:	0
Development Standard Variation:	Building Height Variation: 22.23%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 5,408,484.00
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EXECUTIVE SUMMARY

This review application seeks to review the determination of Development Application DA2024/0725 which was determined by way of refusal on 25 September 2024, pursuant to Section 8.2 of the *Environmental Planning and Assessment Act 1979* (EPA Act). DA2024/0725 sought consent for demolition works and construction of a dwelling house and associated site works.

DA2024/0725 was recommended for approval within the assessing officer's Assessment Report, however, the development was required to be determined by the Northern Beaches Council Development Determination Panel (DDP) due to its contravention of the height of buildings development standard by greater than 10%. The DDP did not agree with the assessing officer's recommendation and refused the application for the following reasons:

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

the Pittwater Local Environmental Plan 2014.

Particulars

- a) *The proposal is inconsistent with objectives of the Height of buildings control.*
2. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of D1.11 Building envelope in the Pittwater 21 Development Control Plan.*

Particulars

- a) *The proposal does not achieve outcomes of the Building envelope control.*
3. *Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest*

The proposal under this application is substantially the same as that under DA2024/0725. The plans demonstrate that minor changes have been made in relation to building height and the building envelope of the dwelling in response to the reasons for refusal. The most notable change is to the third storey (upper level), which has an increased western rear setback of 1m and the removal of the 900mm wide eaves on the northern and southern side setbacks to reduce the building envelope and height.

Whilst marginally reducing the building's envelope, these amendments are not deemed sufficient in addressing the reasons for refusal.

The development continues to contravene the height of buildings development standard, with a building height of 10.39m. The applicant has also not submitted a Clause 4.6 written request to vary the development standard as part of this application.

Despite the minor reduction in built form, the dwelling remains non-compliant with the D1.11 Building envelope in the Pittwater 21 Development Control Plan.

The review application was notified in accordance with Council's Community Participation Plan (CPP) between 22 January 2025 and 5 February 2025. As a result, no submissions were received. It is noted that the original DA also did not receive any submissions.

In summary, the review finds that the amended proposal remains an unacceptable development, and it is recommended that the DDP refuse the development application for the following reasons:

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

Particulars

- a) *With a building height of 10.39m, the proposal contravenes the building height development standard under clause 4.3(2) of the Pittwater Local Environmental Plan 2014.*
- b) *The proposal fails to satisfy the provisions of clause 4.3(2D) of the of the Pittwater Local Environmental Plan 2014 and consequently does not benefit from the 10m building height standard under this subclause.*
- c) *Regarding clause 4.6 of the Pittwater Local Environmental Plan 2014, the applicant has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances. The applicant has also not demonstrated there are sufficient environmental planning grounds to justify the contravention of the development standard.*

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.3 Earthworks of the Pittwater Local Environmental Plan 2014.

Particulars

- a) The proposed earthworks result in retaining walls up to 3m high along the side boundaries with large vertical drops unresolved to the neighbouring property.
 - b) The proposal also does not indicate whether side boundary fences are to be erected.
 - c) This results in a poor cross boundary relationship that gives rise to safety and amenity impacts.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent following provisions within the Pittwater 21 Development Control Plan.

Particulars

- a) A4.1 – Avalon Beach Locality – the proposal is contrary to the desired character statement for the Avalon Beach Locality.
 - b) B5.15 – Stormwater – The stormwater plans omit any details regarding the side boundary retaining walls depicted in the architectural plans.
 - c) C1.4 – Solar Access – Contraventions to the building height, building envelope, and setback controls unreasonably reduce solar access to the neighbouring dwelling at 177 Riverview Road.
 - d) D1.9 – Side and rear building line – The inability to comply with side setback controls result in a built form outcome that discords with the character of the area and unduly overshadows neighbouring property.
 - e) D1.11 – Building envelope – Significant non-compliance with the building envelope controls result in a built form outcome that discords with the character of the area and unduly overshadows neighbouring property.
4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest

PROPOSED DEVELOPMENT IN DETAIL

The Review Application seeks consent for the demolition works and construction of a dwelling house and associated site works.

Changes to the proposal from DA2024/0725:

- The following changes have been made in response to the reasons for refusal of DA2024/0725 to marginally reduce the dwelling's building height and building envelope contraventions:
 - o Increased rear setback of third storey (upper level) by 1m. Facilitated by the reduction in widths of the central hallway and courtyard areas
 - o Reduced width of the northern and southern elevation eaves of the third storey by 900m
- The proposal has also changed the concrete and metal roofing colours from a light beige to dark brown.

Detailed description of the revised proposal under REV2024/0031:

Demolition works:

- Dwelling house
- Detached garage
- Concrete driveway
- Stairs along the northern side setback
- Rear access stairs from the dwelling to the rear yard

Second Floor (upper level third storey):

- Split level, with entry from Riverview Road
- Upper portion of level (eastern end, FFL RL 27.05)
 - o Double car garage
 - o Lift 1 within garage to provide entry to the rumpus room in main living level
 - o Dwelling entry portico
- Lower portion of level (western end, FFL RL 24.48)
 - o Rumpus room 1
 - o Powder room
 - o Open plan kitchen/living/dining space
 - o Outdoor dining and entertaining area, and courtyards
 - o Lift 2 located on the southern elevation of kitchen which provides access between this level and the two lower levels
 - o Central stairwell providing access to the two lower levels
 - o Balconette and planter along entire western elevation

First Floor (middle level second storey):

- Master bedroom with WIR and ensuite
- Bedroom 2 with ensuite
- Large and small storerooms
- Library
- Lift 2 and stairwell
- Balconette and planter along entire western elevation

Ground Floor (lower level first storey):

- Bedroom 3 and Bedroom 4
- Main bathroom
- Laundry room
- Rumpus room 2
- Cellar
- Lift 2 and stairwell
- Terrace and planter along entire western elevation
- Access from terrace to external stairwell which provides access to western rear portion of the lot and waterway

Tree Removal and Landscaping:

- Retention of nine (9) trees
- Removal of ten (10) trees, six (6) of which are exempt for removal:

Identification in AIA	Species	Koala Use Species	Exempt/ Requires Consent
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T2	<i>Jacaranda mimosifolia</i> (Jacaranda)	No	Exempt
G3	<i>Archontophoenix cunninghamiana</i> (Bangalow Palm)	No	Exempt
T4	<i>Corymbia gummifera</i> (Red Bloodwood)	Yes	Requires Consent
G5	<i>Ligustrum lucidum</i> (Large Leaved Privet)	No	Exempt
T6	<i>Brachychiton acerifolius</i> (Illawarra Flame Tree)	No	Exempt
T7	<i>Ficus rubiginosa</i> (Port Jackson Fig)	No	Requires Consent
T8	<i>Acacia implexa</i> (Hickory Wattle)	No	Requires Consent
T9	<i>Pittosporum undulatum</i> (Native Daphne)	No	Exempt
T11	<i>Corymbia maculata</i> (Spotted Gum)	Yes	Requires Consent
T19	<i>Olea europaea subsp. cuspidata</i> (African Olive)	No	Exempt

- Additional trees and other plantings across the site, particularly within the western rear and side setbacks of the site
- Low plantings within the front setback and central courtyards
- New stairwell from the dwelling down to the western rear yard and stairs/walkway to the waterway and jetty.

Associated Site Works:

- Staircase along the northern side setback leading down to the Ground Floor terrace.
- Excavation associated with creating increased floor area for the lower two levels.
- Fill under the garage and entry portion to have the floor level match the existing shared access driveway.
- Retaining walls within the side setbacks.

Refer to **Figure 1 – Figure 6** below for excerpts of the architectural plans.

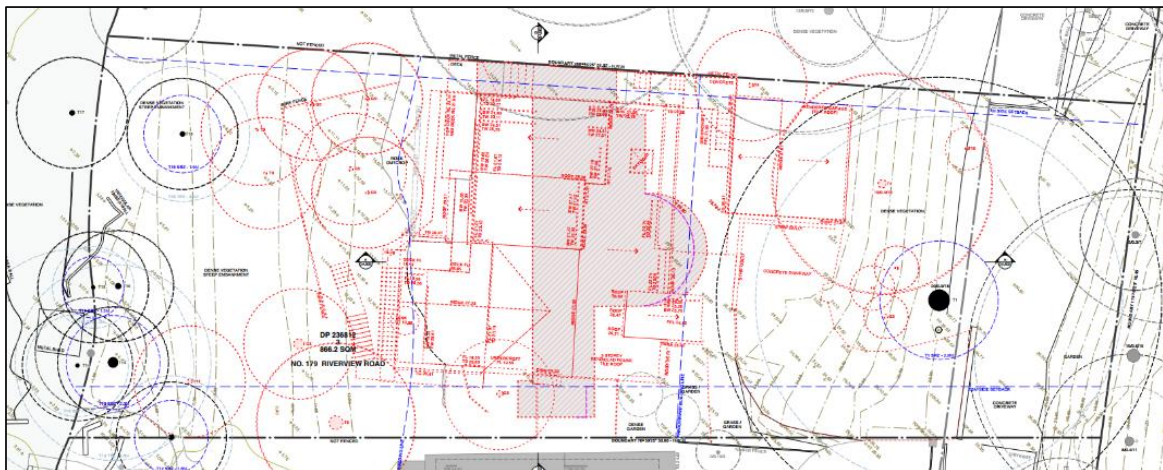


Figure 1 Existing site plan and demolition/tree removal plan.
Source: Madeleine Blanchfield Architects, December 2024.



Figure 2 Proposed site plan, amendments from the original DA shown in purple.
Source: Madeleine Blanchfield Architects, December 2024.



Figure 3 Proposed eastern (front) elevation, presenting to Riverview Road.
Source: Madeleine Blanchfield Architects, December 2024.

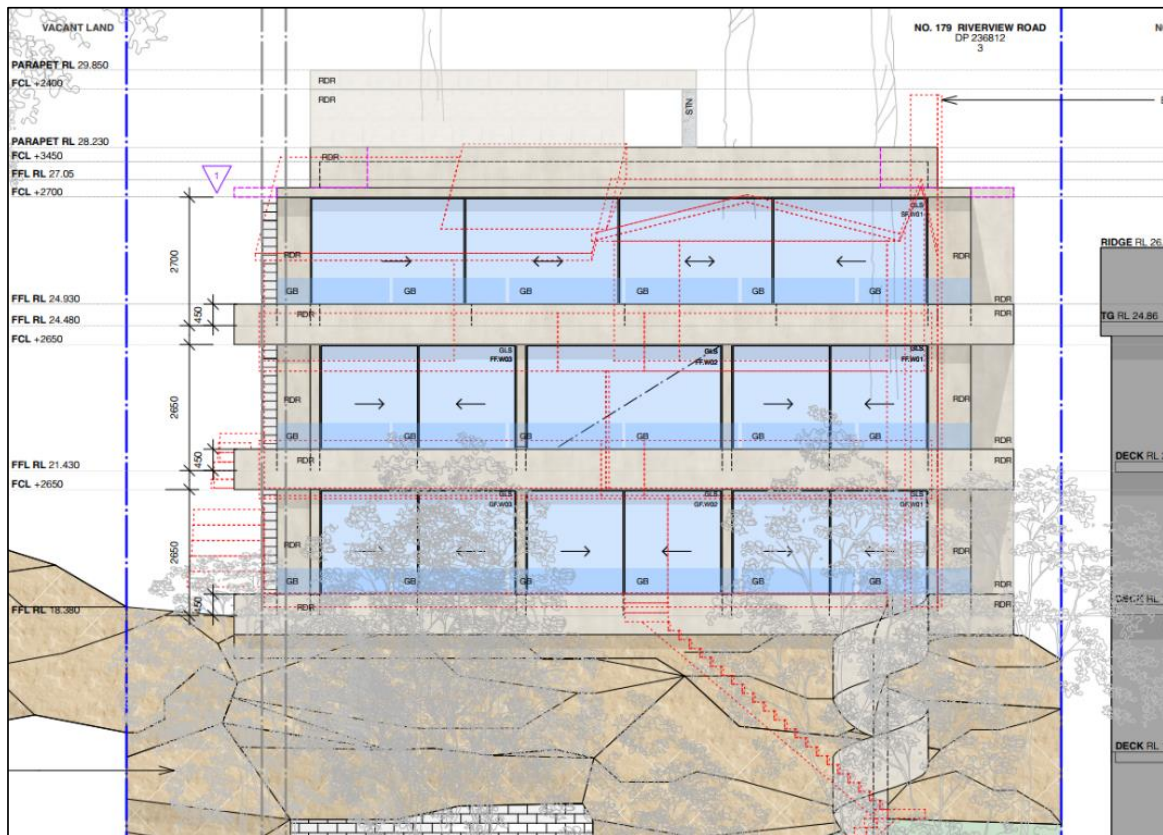


Figure 4 Proposed rear (western) elevation, presenting to Pittwater.
Source: Madeleine Blanchfield Architects, December 2024.

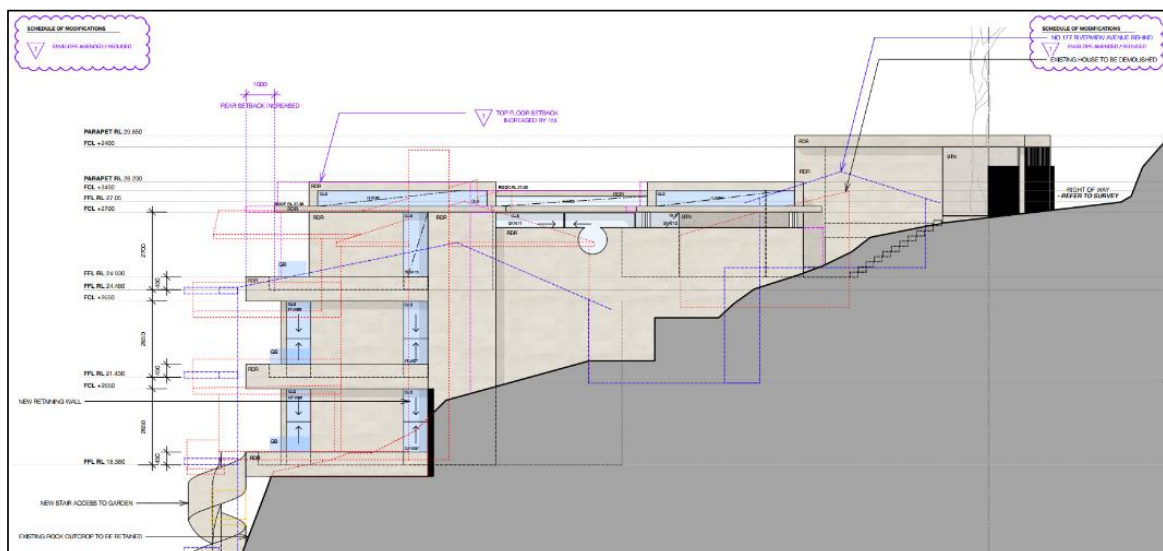


Figure 5 Proposed southern (side) elevation, presenting to 177 Riverview Road.
Source: Madeleine Blanchfield Architects, December 2024.

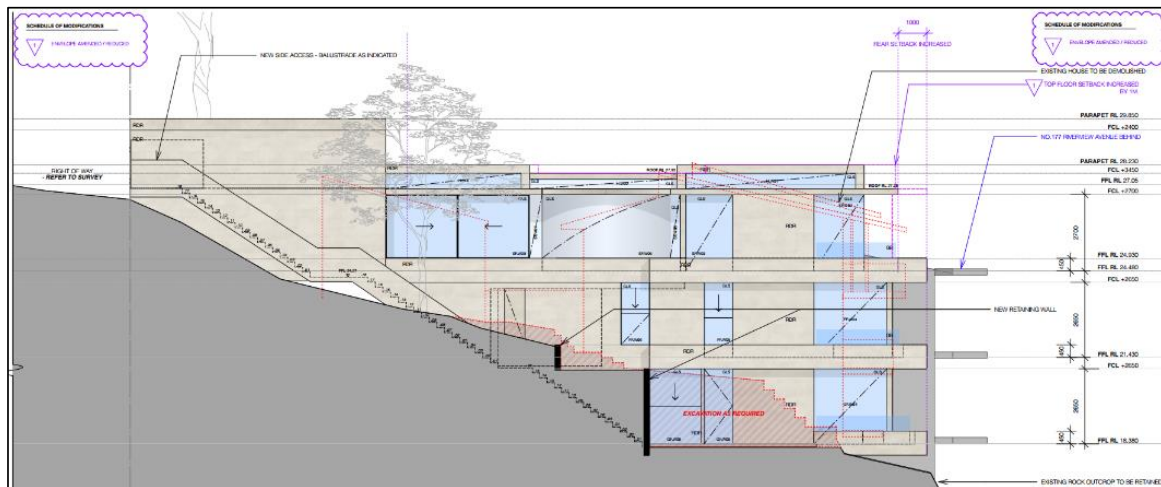


Figure 6 Proposed northern (side) elevation, presenting to 181 Riverview Road.

Source: Madeleine Blanchfield Architects, December 2024.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted on 19 February 2025 and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 – Zone C4 Environmental Living
 Pittwater Local Environmental Plan 2014 – 4.3 Height of Buildings
 Pittwater Local Environmental Plan 2014 – 7.2 Earthworks
 Pittwater 21 Development Control Plan – A4.1 Avalon Beach Locality
 Pittwater 21 Development Control Plan – B5.15 Stormwater
 Pittwater 21 Development Control Plan – C1.1 Landscaping
 Pittwater 21 Development Control Plan – C1.4 Solar Access
 Pittwater 21 Development Control Plan – C1.23 Eaves
 Pittwater 21 Development Control Plan – D1.9 Side and Rear Building Line
 Pittwater 21 Development Control Plan – D1.11 Building Envelope
 Pittwater 21 Development Control Plan – D1.17 Construction, Retaining walls, terracing and undercroft areas

SITE DESCRIPTION

Property Description:	Lot 3 DP 236812 179 Riverview Road AVALON BEACH NSW 2107
Detailed Site Description:	The site comprises one (1) allotment, being 179 Riverview Road, Avalon Beach (Lot 3 in Deposited Plan 236812). The site is located on the western low side of the street and has a rear boundary adjoining the Pittwater waterway. The site is generally rectangular in shape, slightly widening at the rear with an irregular arced and angled rear boundary. The front eastern boundary to Riverview Road is 16.46m, and the rear western boundary to Pittwater is approximately 19.9m. The northern side boundary adjoining 181 Riverview Road is 51.02m and the southern side boundary adjoining 177 Riverview Road is 50.60m. The site has an area of 866.2m². The site is located within the C4 Environmental Living zone pursuant to PLEP 2014. The site experiences a steep fall of approximately 26.7m, falling towards the rear boundary to Pittwater (from approximately RL 29.5 to RL 2.81). There is a further fall of approximately 2.84m within the road reserve from Riverview Road to the front site boundary, due to the steep topography of the locality. The site presently accommodates a three-storey rendered and clad dwelling house with a tiled roof, setback approximately 20m from the front boundary, along with a detached rendered double garage with a tiled roof, situated in front of the dwelling and setback approximately 14m from the front boundary. Due to the topography, the dwelling is located below street level and presents as a one-storey dwelling from the eastern side. When viewed from Pittwater, the building presents as a three-storey dwelling. The rear of the dwelling is constructed on a rock outcrop, with the lower portion under the dwelling exposed. The entire width of the front boundary, to a depth of 7.62m within the site, is accommodated by a Right of Carriageway and a steep shared angled driveway with access further north of the site from Riverview Road, spanning across the front of 181, 179 and 177 Riverview Road and providing access to all three sites. The driveway branches off and extends further within the site to provide access to the detached garage. The remainder of the site that is not accommodated by buildings or driveways is primarily dense vegetation, particularly within the rear of the site fronting Pittwater. The road reserve adjoining the front boundary is also densely vegetated, obscuring the majority of the site from view. The site also benefits from a jetty which provides boat access to the site, located outside of the side boundary in the adjoining waterway. A small metal shed is also located in the area adjoining the rear of the site, along with large rocks and additional trees at the edge of the waterway. Refer to Figure 7 – Figure 11 for site images.



Figure 7 Aerial image of site and surrounding development. Site outlined in blue.
Source: Northern Beaches Council mapping.

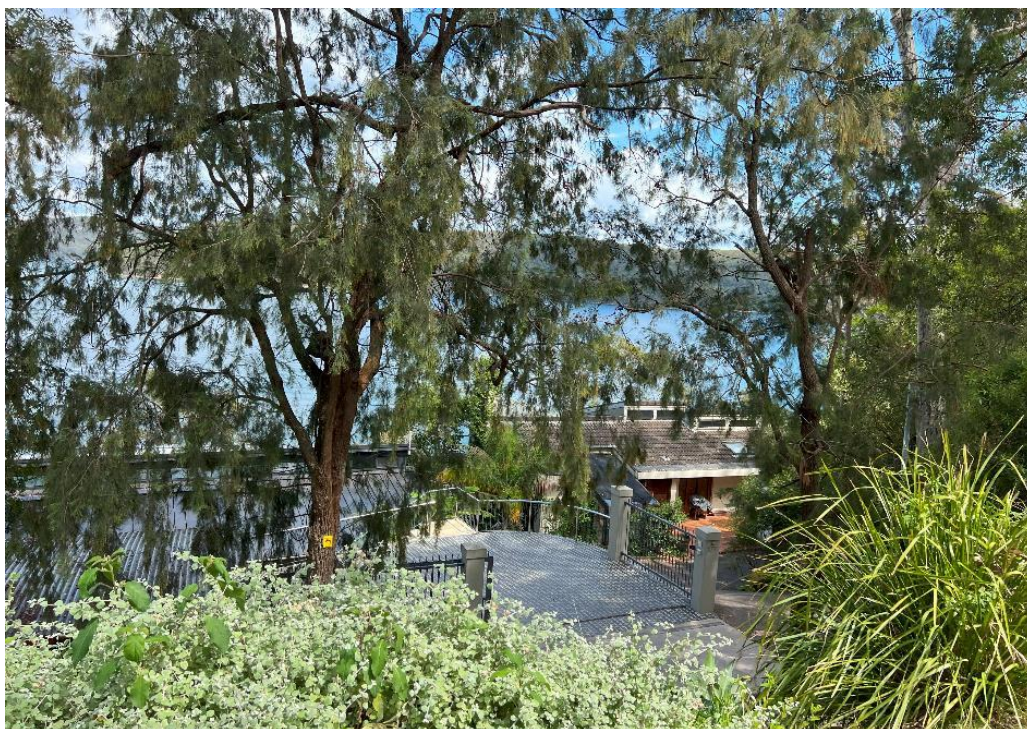


Figure 8 Facing northwest towards the site (right side of image) from the most visible point in the road reserve of Riverview Road. The neighbouring dwelling and driveway (with access from the shared driveway) are visible on the left side of the image.
Source: CPS site inspection, 19.02.2025.



Figure 9 Facing northwest within the subject site towards the dwelling and detached garage.
Source: CPS site inspection, 19.02.2025.



Figure 10 Facing north from the right of carriageway at the southern side boundary of the subject site. Existing dwelling is visible to the left of the image. The garage and carport at 183 Riverview Road are visible in the background. The large tree next to the silver car is Tree 1 which is to be retained. The new garage is to be located on the northern side of Tree 1.
Source: CPS site inspection, 19.02.2025.



Figure 11 Looking up at the rear of the dwelling and rock outcrop from the densely vegetated rear yard.
Source: CPS site inspection, 19.02.2025.

Detailed Description of Adjoining/ Surrounding Development:	The neighbouring site to the south is 177 Riverview Road, which includes a three-storey dwelling with a detached garage within the front setback which benefits from the same access driveway from Riverview Road as the subject site. The site has an established landscaped rear yard, along with a boatshed and jetty adjoining the rear of the site. The neighbouring site to the north is 181 Riverview Road, which is primarily an undeveloped lot, with the main portion adjoining the neighbouring dwellings being heavily vegetated with rock outcrops. The site includes a small one-storey cottage located at the rear low portion of the site near the shoreline and is not visible from Riverview Road. The surrounding development on the western low side of Riverview Road is generally characterised by large multi-storey residential dwelling houses that present to the street as single storey due to their setbacks and placement within the topography. Development on the eastern high side of the street is generally characterised by two-storey development with views to Pittwater above the western side developments due to the steep topography. Refer to Figure 12 – Figure 14 for images of surrounding sites.
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Figure 12 Facing east towards the subject site from the end of the jetty. 181 Riverview Road is located to the left of the image, and 177 Riverview Road is located to the right.
Source: Northern Beaches Council site inspection, 25.06.2024.



Figure 13 Facing south towards 177 Riverview Road from the upper-level balcony of the existing dwelling at the subject site.
Source: CPS site inspection, 19.02.2025.



Figure 14 Facing north towards 181 Riverview Road from the upper-level balcony of the existing dwelling at the subject site. The small cottage is visible at the bottom left of the image near the shoreline.
Source: CPS site inspection, 19.02.2025.

SITE HISTORY

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

3 April 2000	Development Application N0313/00 submitted to Council for additions to the dwelling.
3 April 2000	Construction Certificate CC0224/00 submitted to Council for additions to the dwelling.
23 May 2000	N0313/00 approved by Council.
16 June 2000	CC0224/00 approved by Council.
7 June 2024	Development Application DA2024/0725 submitted to Council for Demolition works and construction of a dwelling house and associated site works.
25 September 2024	DA2024/0725 refused by Council.

APPLICATION HISTORY

10 January 2025	Section 8.2(1A) Review of Determination of Application DA2024/0725 submitted to Council.
22 January 2025 – 5 February 2025	Public Exhibition – 14 days. In response, zero (0) submissions were received.
19 February 2025	Site visit.
20 February 2025	Request for Information (RFI) letter sent to the applicant requesting a Biodiversity Addendum Letter to ensure that the new plans were reviewed and whether there were any additional impacts to biodiversity as a result.
21 February 2025	The applicant is requested via email to upload the Waste Management Plan (report) from the original DA to the Planning Portal.
24 February 2025	The applicant submits the Biodiversity Addendum Letter and Waste Management Plan to the Planning Portal.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPA ACT)

Division 8.2 Reviews

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3(2) of the Act, the request for the review must be made and determined within 6 months after the date of the notice of determination of the development application was notified on the NSW Planning Portal. The application was determined on 25 September 2024, along with the notice of determination notified on the NSW Planning Portal. The review was submitted on 10 January 2025 and is to be considered by Council's Development Determination Panel on 12 March 2025, which is within the stipulated 6 months.

Section 8.3(3) provides that the Council may review a determination if the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Proposed Development in Detail' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly, it is concluded that the amended proposal is substantially the same as the original proposal and it is considered that the proposal satisfies the requirement of Section 8.3(3).

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.

BIODIVERSITY VALUES

Portions of the site are mapped on the state Biodiversity Values Map (BV Map), (refer to **Figure 15**). The proposal seeks to remove ten (10) trees from within the site, with some being within the BV mapped land. The original DA, DA2024/0725, was supported by a Biodiversity Development Assessment Report (BDAR), prepared by GIS Environmental Consultants (dated 17 May 2024).



Figure 15 Excerpt of Biodiversity Values map, site outlined in yellow.
Source: NSW Planning Portal.

The proposal was referred to Council's Natural Environment – Biodiversity officer, who stated on 20 February 2025 that the accredited assessor was required to *“submit an addendum letter confirming review of the amended plans and whether there are any additional impacts to biodiversity as a result”*. As such, the applicant was sent a Request for Information letter (RFI) on 20 February 2025 to provide the addendum.

On 24 February 2025, the applicant submitted the supporting Biodiversity Addendum Letter prepared by GIS Environmental Consultants (dated 20 February 2025). The letter stated that the proposal, as amended from DA2024/0725, presents a reduced biodiversity impact due to the reduced building footprint. However, the number of credits required remains at 1 credit for each biota, as the BAM-C rounds up to the nearest whole credit. This results in the following credit requirements for the development:

- 1 credit for the 3234-Hunter Coast Lowland Spotted Gum Moist Forest (PSGF EEC)
- 1 credit for the Endangered Large-eared Pied Bat
- 1 credit for the Endangered Eastern Cave Bat

The Addendum Letter concluded that:

“...the changes proposed in the S34 review will not have any additional impact to native vegetation, or other biodiversity values and the number of offset credits will remain the same. The recommendations made in the May 2024 BDAR report still apply”.

The proposal was rereferred to Council's Biodiversity officer who stated that the addendum is sufficient and there are now no objections raised for the proposal in relation to biodiversity, subject to compliance with the provided recommended conditions of consent. As such, the proposal is deemed acceptable in relation to its BV mapping.

COASTAL MANAGEMENT ACT 2016

The proposal is subject to the Coastal Management Act 2016 as the subject site is located within the coastal zone.

The proposal was referred to Council's Natural Environment – Coastal officer, who stated on 20 February 2025 that the development was not contrary to the objects of the Act outlined in Clause 3. As

such, the proposal is satisfactory in relation to this Act.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 22/01/2025 to 05/02/2025 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>Received 17 February 2025</i> <i>Supported – subject to conditions</i> The proposal is supported with regard to landscape issues. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D1 Avalon Beach Locality The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone. The Arboricultural Impact Assessment (AIA) identified 30 trees. All trees outside the legal property boundaries must be retained and protected during the works and the retention of these trees is supported in the AIA. Trees T2, G3, G5, T6, T7, T9 and T19 are exempt by species or height and as such may be managed or removed at the discretion of the applicant without consent. Trees T4 and T8 are prescribed (protected) trees and their removal can be supported subject to tree replacement planting. Tree 11 is no longer impacted by the inclinor and as such it shall be retained. As recommended in the AIA a Tree Protection Plan shall be prepared, and a Project Arborist shall be engaged to supervise work in the tree protection zone of trees to be retained. As outlined in the AIA (section 8.1) footing design in the tree protection zone of tree 1 shall be isolated piers rather than compacted fill and as such the footings shall be designed in collaboration with the Arborist. The landscape proposal is generally supported and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent. All on slab landscape planters must meet Council's minimum soil depth requirements.
NECC (Development Engineering)	<i>Received 10 February 2025</i> <i>Supported – subject to conditions</i> Development engineering raises no objections to the proposed development,

Internal Referral Body	Comments
	subject to conditions.
NECC (Biodiversity)	<i>Received 17 February 2025</i> <i>Not supported</i> The comments in this referral relate to the following applicable controls and provisions: • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Regulation 2017 • SEPP (Resilience and Hazards 2021) – Coastal Environment Area • Pittwater LEP 2014 – Clause 7.6 Biodiversity Protection • Pittwater DCP 21 – Clause B4.7 Pittwater Spotted Gum Forest Endangered Ecological Community Portions of the site are identified on the Department of Climate Change, Energy, the Environment and Water (DCCEEW) Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act 2016, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). A BDAR prepared by GIS Environmental Consultants (May 2024) has been submitted with the application. The BDAR confirms the presence of Pittwater and Wagstaffe Spotted Gum Forest, which is listed as an Endangered Ecological Community (EEC) under the NSW Biodiversity Conservation (BC) Act 2016. In accordance with the BDAR, the proposed impacts to biodiversity include the removal of a total of 0.053ha of PWSGF EEC, including the removal of 10 trees of which 7 are native trees as identified by the Arboricultural Report. The submitted BDAR has been prepared in accordance with Architectural plans dated April 2024 (Madeleine Blanchfield Architects). As such, the BDAR is to be amended to include the most recent plans dated December 2024 (Madeleine Blanchfield Architects). Any additional impacts to biodiversity within the site as a result of the amended plans must be assessed and considered in the amended BDAR. Upon submission of the amended BDAR, Council's Biodiversity Referrals team will recommence assessment of the application. <i>Received 20 February 2025</i> <i>Additional information requested</i> Upon further review, it is requested that rather than amending the BDAR, the accredited assessor submit an addendum letter confirming review of the amended plans and whether there are any additional impacts to biodiversity as a result. <i>Received 24 February 2025</i> <i>Supported – subject to conditions</i> An Addendum Letter (GIS Environmental Consultants, February 2025) has been submitted by the Accredited Assessor noting that the proposed amended design

Internal Referral Body	Comments
	will result in a slight reduction to biodiversity impacts, however the credit obligation remains the same as in the original BDAR. No objections in relation to biodiversity, subject to conditions.
NECC (Coastal)	<i>Received 20 February 2025</i> <i>Supported – subject to conditions</i> The application requests a review of the determination of DA2024/0725. The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. <u>Coastal Management Act 2016</u> 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. <u>State Environmental Planning Policy (Resilience & Hazards) 2021</u> 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. <u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Boston Blyth Fleming Pty. Ltd. the application satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. <u>Pittwater LEP 2014 and Pittwater 21 DCP</u> <u>Estuarine Risk Management</u> 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 Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 3.07m AHD when the design life of proposed development is over 25 years at the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.07m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m. The proposed development is well above this level. Therefore the application is considered to comply with this clause. <u>Development on Foreshore Area</u> A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. The application satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.

Internal Referral Body	Comments
NECC (Riparian)	Received 10 January 2025 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) 2021; • Relevant LEP and DCP clauses; and • Northern Beaches Council Water management for development policy. <u>Riparian</u> 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. <u>Seagrass</u> As per Pittwater DCP B4.16, no filling, dredging or other disturbance shall be undertaken within a 50m buffer area of seagrass beds. The site is within 50m a DPI mapped Posidonia australis (seagrass) Endangered Population. Posidonia is sensitive to sedimentation, sediment plumes and scarring from vessels entering shallow waters. These seagrass beds provide numerous ecological benefits and the planning and execution of works must not have any negative impact on local seagrass beds. <u>Sediment Management</u> 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.
Parks, Reserves and Foreshores	Received 17 January 2025 Supported – subject to conditions The property adjoins a waterway to the west. The significant rock outcropping and established canopy trees along the foreshore will be retained which is supported. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries.

External Referral Body	Comments
Aboriginal Heritage Office	Received 21 January 2025 Supported – subject to conditions Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found

External Referral Body	Comments
	to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.
Ausgrid – SEPP (Transport and Infrastructure) 2021, s2.48	Received 16 January 2025 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 Control 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)

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in Non-Rural Areas

The aims of this Chapter are to protect the biodiversity values of trees and other vegetation in non-rural areas of the State and to preserve the amenity of non-rural areas through the preservation of trees and other vegetation.

The proposal seeks to remove ten (10) trees, with six (6) being listed as exempt species under Council's Tree Management Controls. The development includes the retention of nine (9) trees within the site and proposes the planting of an additional nineteen (19) advanced size trees (100-200L) to maintain and enhance the existing canopy cover.

The application has been reviewed by Council's Landscape officer, who has deemed the proposal satisfactory and provided conditions of consent to ensure the protection of the trees during works. As such, the application is considered to be consistent with the aims of this chapter.

Chapter 4 – Koala Habitat Protection 2021

The site is subject to these provisions, being zoned C4 Environmental Management and being within the Northern Beaches LGA which is located within the Central Coast Koala management area.

The site is subject to Clause 4.10 Development assessment process – other land, as there is no approved Koala Plan of Management (KPOM) for the land and the site is less than 1 hectare in area. The clause has been reproduced as follows:

A council is not prevented from granting consent to a development application for consent to carry out development on land if—

- (a) the land does not have an approved koala plan of management applying to the land, or*
- (b) the council is satisfied that the land is not core koala habitat.*

There is no approved KPOM for the land and Council is satisfied that the land is not a core koala habitat after reviewing the “Koala Species Sightings” NSW SEED map. As such, the DA is acceptable.

The proposal has been reviewed by Council’s Natural Environment – Biodiversity officer, who has raised no concerns with the proposal in relation to biodiversity.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

Division 3 – Coastal Environment Area

The site is wholly located within the Coastal Environment Area (refer to **Figure 16**).

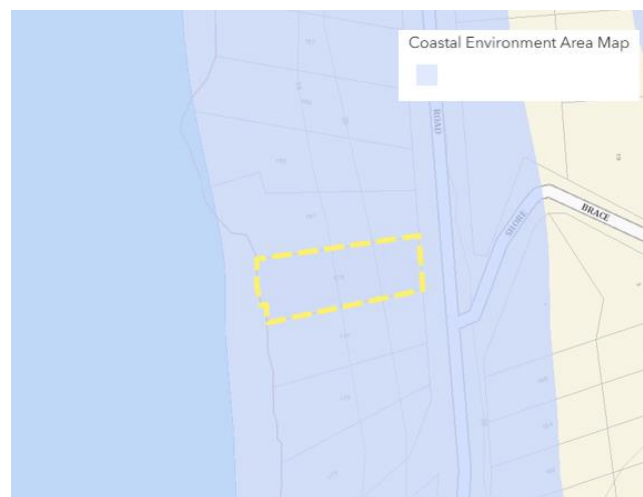


Figure 16 Excerpt of Coastal Environment Area map, site outlined in yellow.
Source: NSW Planning Portal.

The development is subject to Clause 2.10 Development on land within the coastal environment area. This clause states that development consent must not be granted unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the listed items and that the development has been designed to avoid or minimise any potential impacts. Council is satisfied that the development will not result in any adverse impacts on the listed items and the DA is appropriate in this regard.

Division 4 – Coastal Use Area

The site is wholly located within the Coastal Use Area (refer to **Figure 17**).



Figure 17 Excerpt of Coastal Use Area map, site outlined in yellow.
Source: NSW Planning Portal.

The development is subject to Clause 2.11 Development on land within the coastal use area. This clause states that development consent must not be granted unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the listed items and that the development has been designed to avoid or minimise any potential impacts. Council is satisfied that the development will not result in any adverse impacts on the listed items and the DA is appropriate in this regard.

Division 5 – General

The development is subject to Clause 2.12 Development in a coastal zone generally – development not to increase risk of coastal hazards. This clause states that development must not be granted unless the development is not likely to cause an increased risk of coastal hazards on that land or other land. Council is satisfied that the development will not result in increased risks of coastal hazards and the DA is appropriate in this regard.

The development is subject to Clause 2.13 Development in a coastal zone generally – coastal management programs to be considered. This clause states that development must not be granted unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land. There is no certified coastal management program applicable to the land, and as such, the DA is appropriate in this regard.

Council's Natural Environment – Coastal officer has reviewed the proposal and has deemed it satisfactory in relation to this SEPP.

Chapter 4 – Remediation of Land

Chapter 4 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use. Council is satisfied that the land is not a site of possible contamination as it is within an established residential area and Council records indicate that the subject site has been used for residential purposes for a significant period of time. As such, it is considered that the site poses no risk of contamination and therefore, no further assessment of contamination is required.

State Environmental Planning Policy (Sustainable Buildings) 2022

Chapter 2 – Standards for Residential Development – BASIX

A BASIX Certificate (1745986S_03) has been submitted with this application, dated 29 November 2024. A NatHERS Certificate (0009264649-09) has also been submitted with this application, dated 21 November 2024.

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

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 – Infrastructure

Division 5 – Electricity Transmission or Distribution

Subdivision 2 – Development likely to affect an electricity transmission or distribution network

The development is subject to Clause 2.48 Determination of development applications – other development.

The proposal has been referred to Ausgrid to ensure compliance with this clause. Ausgrid has stated that the development is satisfactory, subject to compliance with the provided conditions of consent in relation to works within the vicinity of Ausgrid underground cables and Ausgrid overhead powerlines, as well as the new driveway being located within proximity to existing power poles. The development also requires new or modified electrical connections.

Given compliance with the provided conditions of consent, the proposal is satisfactory in relation to this clause in the event the DA is approved.

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
Cl.4.3(2) Height of buildings	8.5m	10.39m	22.23%	No
Cl.4.3(2D) Height of buildings	10m if compliant with cl.4.3(2D)	10.39m and not compliant with cl.4.3(2D)	22.23%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes

7.2 Earthworks	No
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The objectives of the zone are:

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

Comment: The proposed dwelling has been marginally amended; however, it still contravenes the building height development standard and building envelope controls. This results in a building which is incompatible with the surrounding built form on the western side of Riverview Road.

The dwelling presents significant bulk and scale to Pittwater and poorly responds to the natural topography of the area. A better design response would see a more terraced approach to development on the land.

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

Comment: The noncompliant bulk and scale, and poor building response to site topography compromises the aesthetic values of the local area.

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

Comment: The development has not been sensitively designed to be integrated with the existing landform and landscape. The development is not consistent with the scale of the surrounding development, which favours stepping of the built form.

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

Comment: The development does not result in any adverse impacts on riparian or foreshore vegetation, or wildlife corridors.

Clause 4.3 Height of buildings

The site is subject to a maximum building height of 8.5m. Refer to **Figure 18** for an excerpt of the Height of Buildings map.



Figure 18 Excerpt of Height of Buildings map, site outlined in red.
Source: NSW Planning Portal.

Despite this, Clause 4.3(2D) outlines an exception to the standard, reproduced as follows:

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and*
- (b) the objectives of this clause are achieved, and*
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

The development does not satisfy the requirements with (2D) for the following reasons:

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and***

Comment:

The proposed dwelling exceeds the 8.5m height control for a portion of the rear of the third storey (upper level). This portion extends for a width of approximately 5.8m across the entire length of the western elevation. The depth of the exceedance of the 8.5m control varies due to the topography but is shown within Long Section A-A to be approximately 1.2m. The third storey balcony also exceeds the 8.5m height control, sitting just within the 10m height plane (refer to **Figure 19**).

Within the original DA, the rear western elevation eave extended beyond the additional 10m height plane and contributed to the refusal of the development. A larger portion of the third storey also exceeded the 8.5m height limit (refer to **Figure 20**). The third storey has been amended to include an increased rear setback of 1m, allowing this protruding portion to fully sit within the 10m height plane as shown on Long Section A-A.

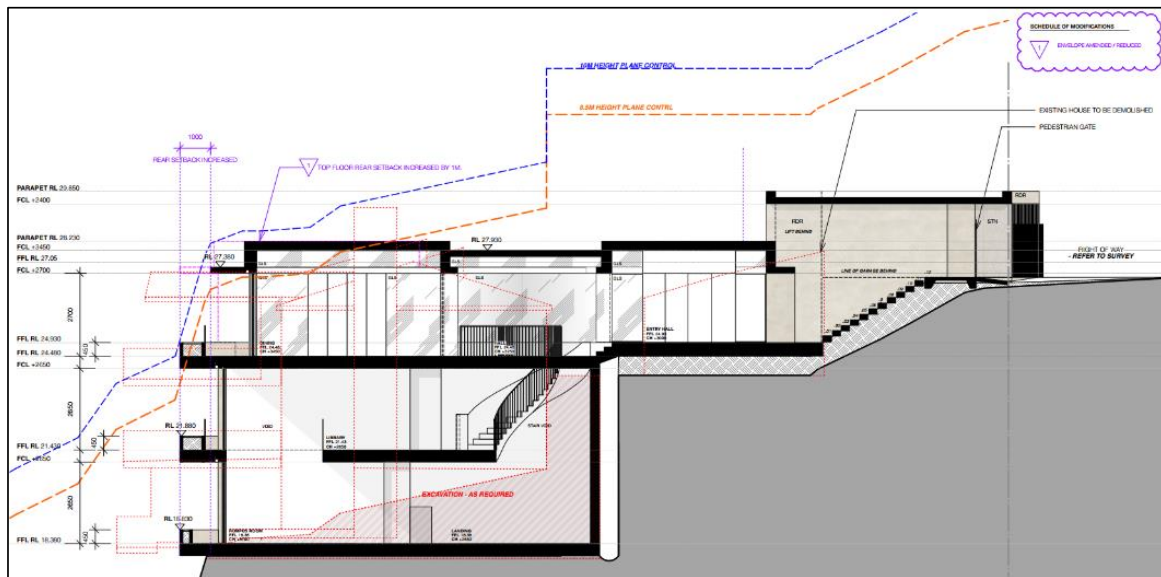


Figure 19 Proposed Long Section A-A for REV2024/0031. Building shown not to contravene the 10m standard in this location.
Source: Madeleine Blanchfield Architects, December 2024.

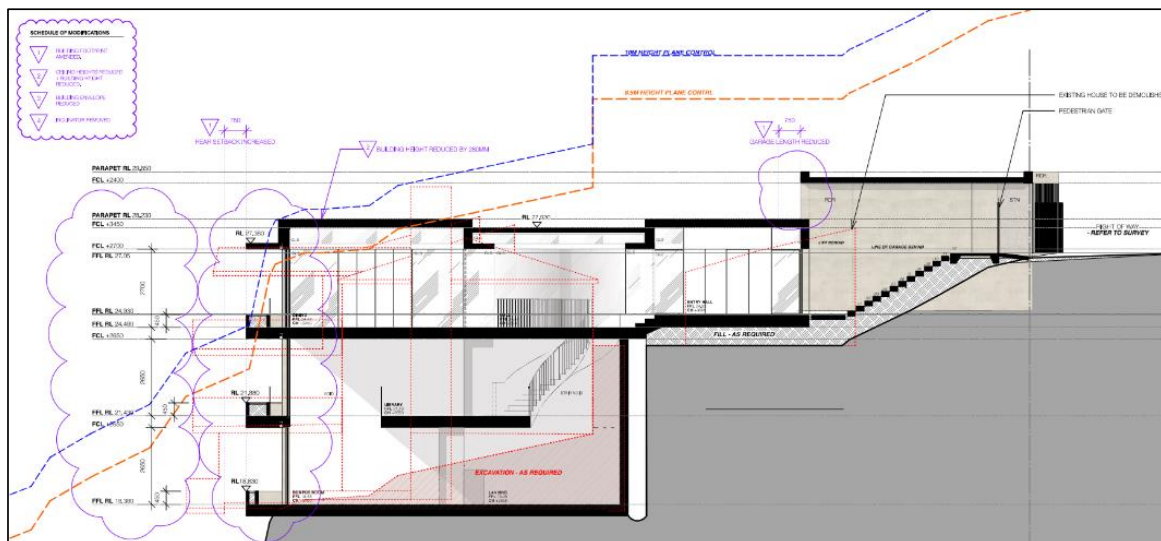


Figure 20 Previous Long Section A-A from DA2024/0725. Minor elements of building contravened the 10m height limit.
Source: Madeleine Blanchfield Architects, May 2024.

A review of the original application under DA2024/0725 revealed that additional diagrams within the architectural plan set were submitted to demonstrate the 10m height breach (refer to **Figure 21** and **Figure 22**). These plans demonstrate that there is an additional anomaly located within the topography which results in a greater breach of the height standard. As this anomaly is located to the side, and not located through the central long section, the anomaly is not captured when showing the 8.5m and 10m height planes in Long Section A-A. As such, the submitted long section is not a clear indication of whether the building height is contravened.



Figure 21 Additional 10m height elevation and cross section from DA2024/0725.
Source: Madeleine Blanchfield Architects, May 2024.

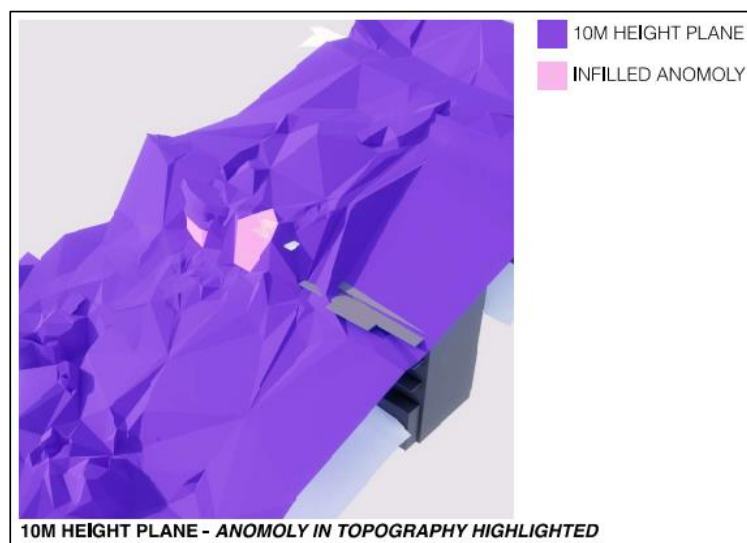


Figure 22 Additional 10m height plane from DA2024/0725.
Source: Madeleine Blanchfield Architects, May 2024.

The diagrams included in DA2024/0725, which were crucial for assessing building height, were omitted from the REV2024/0031 plan set. Additionally, the submitted Long Section drawing does not accurately reflect the lowest existing ground level. Therefore, to ensure an accurate height calculation for this application, the submitted site survey has been overlaid with the site plan (refer to **Figure 23**).

The overlay shows the building height being non-compliant at 10.39m. This is based on the surveyed spot level of RL16.99 (circled in dark red) being located directly underneath the third storey roof eave, which is labelled on the drawings as RL 27.38, resulting in the height of 10.39m.



Figure 23 Excerpt of survey overlay onto the site plan. The demonstrated location of Long Section A-A within the plans is shown as the blue line. The dark red circle denotes the lowest surveyed point (RL 16.99), which is directly under the location of the third storey roof eave (shown in yellow dashed line), which has a RL of 27.38. The red dashed line demonstrates the point at which the long section should have been drawn at to correspond with the lowest existing ground level.

Source: CPS overlay of site plan (Madeleine Blanchfield Architects, Dec 2024) and survey (Hill & Blume, July 2024).

In this case, the proposal would be required to be supported by a Clause 4.6 written request to vary the development standard, however this is not included with the application.

Further, in the absence of height plane diagrams and a section through the highest point of the building, it is not possible accurately ascertain the extent of the building above 8.5m in height as 'minor'. In this circumstance, it cannot be said the development satisfies the requirements of cl.4.3(2D) to benefit from the 10m building height standard.

In any event, given the building height is measured at 10.39m, and in the absence of a clause 4.6 written request to vary the development standard, consent cannot be granted to the development because of the building height contravention.

(b) the objectives of this clause are achieved, and

Comment:

The objectives of this clause are reproduced below:

- (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) and (b):

The proposed dwelling is not consistent with the desired character and built form of surrounding dwellings on the western side of Riverview Road.

The development does not have a visible height from the streetscape of Riverview Road as it is recessed within the slope of the site, allowing only the roof plane and upper level to be visible. This is reflective of surrounding development on the western side of Riverview Road. The height non-compliance is more prevalent from the western waterfront elevation, with surrounding recently approved developments presenting as tiered multi-storey dwellings that are stepped and conform better to the sloped topography.

The proposed dwelling presents as a solid three-storey building from the western and side elevations. The amendment from DA2024/0725 to have an increased setback of 1m for the third storey does not alleviate the visual impact of the dwelling, which continues to present as a three-storey building, despite the minor recess. This is not compatible with the height and scale of neighbouring developments on the western side of Riverview Road, which feature developments that step to conform with the natural topography and height plane.

As such, the variation to the height standard results in the dwelling not satisfying this objective in relation to desired character and compatibility with surrounding development and cannot be supported.

Objective (c):

The dwelling design results in unreasonable overshadowing on the neighbouring southern allotment at 177 Riverview Road. The proposal relies upon the existing overshadowing non-compliance presented by the existing dwelling house. The shadow diagrams submitted compare the proposed dwelling shadows to the existing shadows cast by the existing dwelling. This is not an acceptable approach given the proposal is for the redevelopment of the site and should comply with the solar access controls. The contravening building height and non-compliant building envelope contribute to the additional overshadowing.

The neighbouring dwelling has a square window located near the centre of the upper level and a narrow vertical window located on the western end of the upper level of this elevation. The proposed development results in the square window being completely overshadowed and the vertical window being completely overshadowed at 9am and 12pm, and the northern half overshadowed at 3pm. Each level of the western elevation also has private open space balconies and floor to ceiling windows to maximise solar access. These are entirely overshadowed at 9am and 12pm and partially overshadowed at 3pm. Refer to **Figure 24** for excerpts of these shadow diagrams.

As such, the development does not provide a minimum of 3 hours of sunlight to 177 Riverview Road between 9am and 12pm on June 21st.



Figure 24 Shadow diagrams projected onto 177 Riverview Road at 9am, 12pm and 3pm on 21 June. Dark shadows indicate existing and continued overshadowing, blue indicates additional overshadowing from the proposal, green indicates reduced overshadowing from the proposal which presently exists from the existing dwelling house on site.

Source: Madeleine Blanchfield Architects, December 2024.

Objective (d):

The proposal does not result in any view sharing impacts, given the neighbouring dwellings all have direct western outlooks onto Pittwater. Given the steep topography of the locality, dwellings located on the high eastern side of Riverview Road will not experience detrimental view impacts, as they are sited much higher within the landscape and have views that extend above the height of the proposed dwelling.

Objective (e):

As discussed regarding objectives (a) and (b), the development is not considered to respond sensitively to the topography. In addition to having minimal stepping across the site to better manage the slope, the site also proposes extensive excavation.

Given that height is measured from existing ground level (EGL), the bulk of the dwelling is not as prominent when assessing height. However, the extent of the building that has a height greater than 8.5m when measured from proposed ground level to the roof is more extensive than when measured from EGL. This contributes to the increased bulk of the dwelling when perceived from the side elevations and demonstrates that the dwelling has not responded sensitively to the natural topography.

Objective (f):

The design of the development features minimal stepping of the built form in comparison to surrounding allotments with similar site constraints. As such the building has an increased visual prominence when viewed from Pittwater. The 1m increased setback of the upper level only marginally alters the appearance of the dwelling when viewed from the waterway and is not effective in reducing the visual impact of the development.

(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and

The building footprint is situated on a slope that is in excess of 16.7°, being calculated as 20.35° (37.1%).

(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

The building does not incorporate sufficient stepping on the site and therefore does not sufficiently respond to the natural slope. The development relies upon additional cut and fill and the 10m height limit

to achieve general conformity with the height limit. The lack of stepping in the built form results in the development being contrary to the controls and objectives of Clause 4.3. The extensive excavation is not justifiable given the height breach and minimal stepping of the development.

As the development does not comply with all requirements of Clause 4.3(2D), the site is considered to not justify application of the 10m height limit. The dwelling therefore does not comply with the development standard and does not satisfy Clause 4.3 of PLEP 2014.

Clause 7.2 Earthworks

The objective of this clause is “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”.

The design of the dwelling requires additional excavation at the eastern end of the lower levels to provide additional floor space. The extent of cut is approximately 6m deep for a width of approximately 1.73m. This portion is located beyond the eastern excavation extent of the existing dwelling. The remainder of excavation required on the lower level is more sloped due to the natural topography, ranging between the existing ground level on the western end and approximately 2.94m to the east. The proposal also requires fill to an extent of approximately 1m below the garage and 600mm below the entry hall and rumpus room on the upper level of the house. Large retaining walls to an extent of 3m in height between the side boundaries and the dwelling are proposed to manage the earthworks within the side setbacks.

The development is not considered to appropriately manage the constraints of the site in relation to topography and existing excavation. The combination of extensive excavation with a development that continues to breach the height of buildings development standard demonstrates an excessive built form that could be better designed to conform to the topography of the land.

The consent authority is required to consider the following matters in determining whether to grant development consent for earthworks or development involving ancillary earthworks:

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

The proposal is unlikely to disrupt or have a detrimental effect on drainage patterns or soil stability. The proposal is accompanied by a Stormwater Management Plan and a Geotechnical Report which consider the effects of the proposal on these elements.

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

The proposal seeks to further extend existing excavated areas to provide additional floor space on the lower levels. Any future redevelopment of the site would likely make use of the same footprint and utilise the earthworks due to the constraints of the site.

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

The proposal is accompanied by a Waste Management Plan which outlines how excavated material will be disposed of and that fill will utilise some of the excavated material where practical.

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

The proposed earthworks are contained within the site, however the extent of earthworks and the use of large retaining walls within the side setbacks gives rise to a poor cross boundary relationship. The retaining wall adjoining the southern boundary is 3m in height. There are two retaining walls adjoining the northern boundary, one being 0.9m in height and the second being 3m in height. This creates large contrasts in the

ground level, where the large vertical drops are unresolved on the neighbouring sites. The proposal also does not indicate whether side boundary fences are to be erected, in which case could result in an additional 1.8m atop the retaining walls, presenting a potential maximum 4.8m vertical wall on the boundary. This demonstrates a poor method of managing the proposed earthworks that results in adverse effects on neighbouring properties.

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

The proposal is accompanied by a Waste Management Plan which outlines how excavated material will be disposed of and that fill will utilise some of the excavated material where practical.

(f) the likelihood of disturbing relics,

The proposal has been reviewed by the Aboriginal Heritage Office which has stated that there are likely to be no relics or heritage issues for the proposed development. In the case that any items are uncovered during earthworks, the Aboriginal Heritage Office is to assess the findings and report them accordingly.

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

The site has a western boundary adjoining Pittwater. The proposal has been accompanied by an Erosion and Sediment Control Plan which outlines measures to be implemented to ensure that waste and materials are prevented from entering the waterway during demolition or construction works.

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

The proposal does not provide sufficient information to demonstrate that the earthworks will not result in adverse impacts. The development includes large unresolved retaining walls, with the potential for additional height from side boundary fencing, resulting in a poor cross boundary relationship. The development continues to breach the height of buildings development standard and the building envelope controls, demonstrating that despite the extensive excavation proposed, the building continues to have an excessive built form. This is an unacceptable design approach, and the extent of earthworks is not justifiable given the continued non-compliances.

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

The site is not a heritage item, an archaeological site or within a heritage conservation area. The site is also not within the vicinity of any heritage items, archaeological sites or heritage conservation areas.

Clause 7.6 Biodiversity

The site is identified as "Biodiversity" on the PLEP 2014 Biodiversity Map. Refer to **Figure 25** for an excerpt of the Biodiversity map.



Figure 25 Excerpt of Biodiversity map, site outlined in red.
Source: NSW Planning Portal.

The proposal has been supported by a BDAR prepared by GIS Environmental Consultants (dated 17 May 2024) and an Addendum Letter (dated 20 February 2025) which outlines that the development is satisfactory in relation to biodiversity issues, given compliance with the recommendations and required biodiversity credits.

The proposal was rereferred to Council's Biodiversity officer upon receipt of the Addendum Letter, who stated that the addendum is sufficient and there are now no objections raised for the proposal in relation to biodiversity, subject to compliance with the recommended conditions of consent provided. As such, the proposal is deemed acceptable in relation to its biodiversity mapping.

Clause 7.7 Geotechnical hazards

The site is identified as "Geotechnical Hazard H1" on the PLEP 2014 Biodiversity Map. Refer to **Figure 26** for an excerpt of the Geotechnical Hazard map.

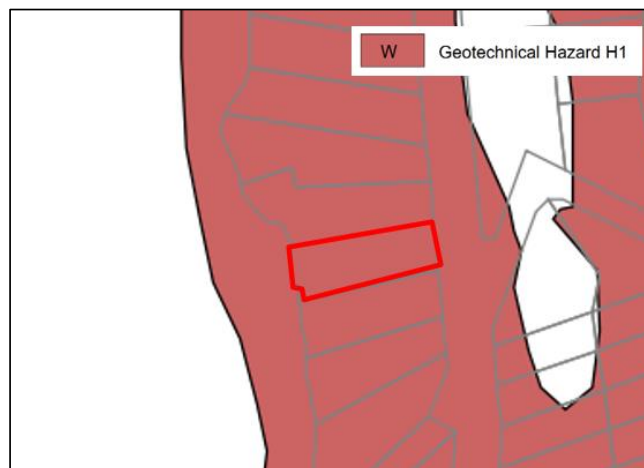


Figure 26 Excerpt of Geotechnical Hazard map, site outlined in red.
Source: NSW Planning Portal.

The application has been supported by a Geotechnical Risk Assessment prepared by Crozier Geotechnical Consultants (dated May 2024), which states that the development is satisfactory in relation to geotechnical concerns, subject to compliance with the recommendations and requirements of the report. The proposal has also been reviewed by Council's Engineering referral officer who has not raised any engineering or drainage concerns with the development. As such, the development is considered to satisfy the

requirements of Clause 7.7.

Clause 7.8 Limited development on foreshore area

The site is identified on the PLEP 2014 Foreshore Building Line map, with the line dissecting through the western third of the site. Refer to **Figure 27** for an excerpt of the Foreshore Building Line map.



Figure 27 Excerpt of Foreshore Building Line map, site outlined in blue.
Source: NSW Planning Portal.

The proposed dwelling house is situated entirely to the east of the foreshore building line. The proposal includes the provision of waterway access stairs from the dwelling to the existing jetty to the west of the foreshore building line. This form of development is permitted in accordance with subclause (2). Council is satisfied that the works within the foreshore area are consistent with the objectives of this clause and the requirements of subclause (3) and (4).

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	No	No
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	No	No
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	No
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	No	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	No
D1.11 Building envelope	No	No
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	No	No
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.1 Avalon Beach Locality

Description of non-compliance

The proposal is contrary to the desired character statement for the Avalon Beach Locality. The relevant statements have been reproduced below.

The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with development. The objective is that there will be houses amongst the trees and not trees amongst the houses.

Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

The western elevation of the dwelling clearly presents as a three-storey dwelling, despite the minor rear setback of 1m on the third storey. The three-storey appearance results in the development having an increased height and scale within the landscape. The development does not satisfactorily utilise the slope of the landform to create a compliant built form.

Merit consideration

The proposal does not comply with the desired character of the Avalon Beach Locality, particularly in that it clearly presents as a three-storey building when viewed from the western elevation presenting to Pittwater and from the side elevations presenting to neighbouring developments. The control requires developments that are located on slopes to be stepped down to conform to the topography and remain as two-storey elements as it progresses along the landform.

The development does not effectively manage the landform and as a result, is non-compliant with the suite of built form controls (i.e. building height, building envelope and side setbacks). This results in a building that is contrary to the desired character of the locality. Surrounding developments that have been recently approved by Council clearly demonstrate a stepped two-storey built form which is not present within the subject development.

As a result, the development is not considered to adequately address the desired character controls for the Avalon Beach Locality and cannot be supported.

B5.15 Stormwater

Description of non-compliance

The proposal is non-compliant with the following control:

Stormwater runoff must not cause downstream flooding and must have minimal environmental impact on any receiving stormwater infrastructure, watercourse, stream, lagoon, lake and waterway or the like.

Merit consideration

It is acknowledged that a referral response was received from Council's Engineer stating that the stormwater impacts were acceptable. However, a review of these plans has revealed that they have omitted details of the large retaining walls within the side setbacks and consider how stormwater will be managed in reference to these changes in landform.

This is contrary to the objectives of the control, reproduced below:

- *Improve the quality of water discharged to our natural areas to protect and improve the ecological and recreational condition of our beaches, waterways, riparian areas and bushland;*
- *Minimise the risk to public health and safety;*
- *Reduce the risk to life and property from any flooding and groundwater damage;*
- *Integrate Water Sensitive Urban Design measures in new developments to address stormwater*

- and floodplain management issues, maximise liveability and reduce the impacts of climate change.*
- *Mimic natural stormwater flows by minimising impervious areas, reusing rainwater and stormwater and providing treatment measures that replicate the natural water cycle*
- *Reduce the consumption of potable water by encouraging water efficiency, the reuse of water and use of alternative water sources*
- *Protect Council's stormwater drainage assets during development works and to ensure Council's drainage rights are not compromised by development activities.*

The lack of details in relation to the retaining walls results in the impact of stormwater not being able to be accurately ascertained. As such, the development may result in adverse impacts on the adjoining sites due to insufficient information provided in the plans.

C1.1 Landscaping

Description of non-compliance

The proposal is contrary to the following controls:

At least 2 canopy trees in the front yard and 1 canopy tree in the rear yard are to be provided on site. Where there are existing canopy trees, but no natural tree regeneration, tree species are to be planted to ensure that the canopy is retained over the long-term. Where there are no canopy trees the trees to be planted are to be of sufficient scale to immediately add to the tree canopy of Pittwater and soften the built form.

The front of buildings (between the front boundary and any built structures) shall be landscaped to screen those buildings from the street as follows:

- *60% for a single dwelling house, secondary dwelling, rural workers' dwellings, or dual occupancy, and*

Canopy trees are to be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used.

The proposal includes the retention of one (1) large canopy tree (T1) within the front yard and no additional plantings. This presents a shortfall of one (1) canopy tree.

The proposal does not include any landscaping between the front of the building (double garage) and the front boundary.

The large canopy tree within the front yard (T1) is located 500mm from the proposed double garage.

Merit consideration

Despite only providing one canopy tree within the front yard, the adjoining road reserve between the front boundary of the site and Riverview Road is accommodated by four (4) large canopy trees which provide dense screening of the subject site from the road. This is characteristic of the street and locality. The site also has limited front yard space due to the right of carriageway which accommodates the full length of the site frontage to a width of 7.62m, restricting the availability for front yard space and the planting of additional canopy trees.

The right of carriageway also restricts the ability of the site to provide landscaping between the front of the building and the front boundary, as the garage directly adjoins the right of carriageway and there is no landscaping in front of this area. This is acceptable given the constraints of the site and the provision of landscaping to the south of the garage in front of the main dwelling setback.

Tree 1 is located 500mm from the garage. The accompanying Arboricultural Impact Assessment states that the high retention value tree can be preserved with tree sensitive design and construction methods. Hand excavation around this tree is to be undertaken prior to bulk excavation works. Structures are to be

above grade and installed on isolated piers rather than a compacted fill, subbase layer. Location of piers and posts for the dwelling and garage to have location flexibility to allow for the retention of significant roots as determined at time of installation

The desired outcomes of this control are reproduced below:

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

The proposal is consistent with the objectives of the control in that the built form is softened due to existing tree canopy and the steep landform which assists in screening the development from the street. The development seeks to retain the large tree (T1) on site through the use of pier and beam footings, which is also consistent with the desired outcomes. As such, the non-compliances with the controls are acceptable on a merit basis, given compliance with the objectives and site constraints.

C1.4 Solar Access

Description of non-compliance

The proposal is contrary to the following controls within C1.4 Solar Access:

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

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

The development results in the principal living area and the adjoining private open space of the neighbouring dwelling at 177 Riverview Road receiving less than 3 hours of sunlight between 9am and 3pm on June 21st.

Merit consideration

The proposal relies upon the current overshadowing non-compliance presented by the existing dwelling house to justify further solar access contraventions with the proposed development. The shadow diagrams submitted compare the proposed dwelling shadows to the existing shadows cast by the existing dwelling. This is not an acceptable approach given the proposal is for the redevelopment of the site and should aim for compliance with the solar access controls. The reduced solar access to neighbouring property is a direct consequence of the non-compliances with the suite of built form controls, and a design contrary to the desired character for the Avalon Beach Locality.

The southern neighbouring dwelling does not receive at least 3 hours of sunlight between 9am and 3pm on northern elevation or western elevation windows. Construction Certificate plans available on Council's DA tracker for the neighbouring site at 177 Riverview Road approved in 2004 for alterations and additions to the existing dwelling and garage reveal that the room serviced by the northern elevation vertical window and the entire western elevation of windows on the upper level is an open plan lounge, dining and family room (refer to **Figure 28**).

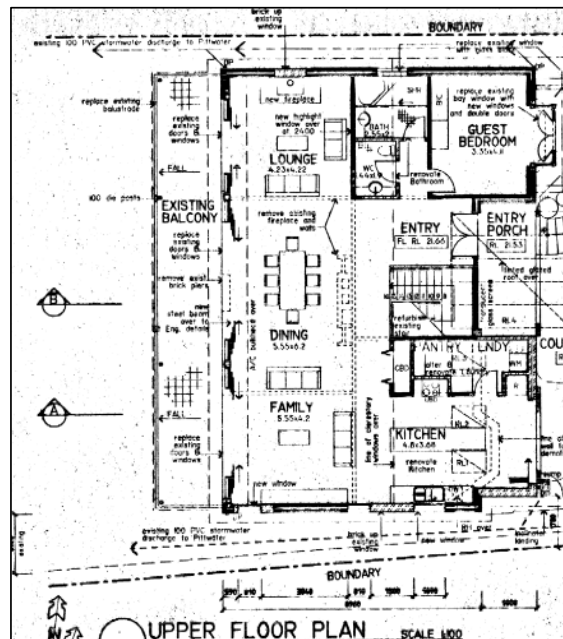


Figure 28 Excerpt of upper floor plan from CC0628/04 at 177 Riverview Road.
Source: Northern Beaches Council DA Tracker.

The architectural plans include shadow diagrams on June 21st for 9am, 12pm and 3pm (refer to **Figure 29**). These plans demonstrate that the northern and western elevation windows are fully overshadowed at 9am and 12pm. The 3pm plan demonstrates that the western elevation windows achieve more sunlight and 50% of the glazed area of the northern elevation vertical window achieves solar access. The proposal is required to demonstrate that three hours of solar access is achieved to these critical areas. Even though the plans omit diagrams for 1pm and 2pm, given that these areas are completely overshadowed at 12pm, it is not possible for these windows to achieve a full three hours of the required solar access, in accordance with the control.



Figure 29 Shadow diagrams projected onto 177 Riverview Road at 9am, 12pm and 3pm on 21 June. Dark shadows indicate existing and continued overshadowing, blue indicates additional overshadowing from the proposal, green indicates reduced overshadowing from the proposal which presently exists from the existing dwelling house on site.

Source: Madeleine Blanchfield Architects, December 2024.

The proposed development prevents sufficient solar access to the neighbouring dwelling because of its non-compliant built form. The reliance of the proposal on the current non-compliant overshadowing of the existing dwelling is not sufficient means to justify even greater overshadowing, particularly in the context of the proposal's non-compliant building height, building envelope, and setbacks.

The outcomes of the control are reproduced below:

Residential development is sited and designed to maximise solar access during mid-winter. (En)
A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)
Reduce usage and/dependence for artificial lighting. (En)

The proposal is contrary to the outcomes of the control, particularly in that the proposed dwelling is not sited and designed to maximise solar access for the neighbouring residential dwelling. As such, the non-compliance with the control cannot be justified.

C1.23 Eaves

Description of non-compliance:

The proposal is contrary to the following control:

Dwellings shall incorporate eaves on all elevations.
Eaves must be a minimum of 450mm in width, excluding any fascia/barge boards and gutters.

The third storey of the dwelling does not incorporate eaves on elements of the northern and southern side elevations within the rear western portion of the dwelling. On the southern elevation, the lift and kitchen pantry cupboard areas do not have eaves, and on the northern elevation, the windows and protruding element also do not have eaves.

The desired outcomes of the control are reproduced below:

Housing that reflects the coastal heritage and character of Pittwater. (S)
Optimise roof forms. (S)
Appropriate solar access and shading is achieved. (En)

Despite not having eaves on the above portions of the elevation, this is consistent with the NatHERS Certificate which does not require eaves for these portions of the dwelling in order for the dwelling to comply with thermal and shading requirements. As such, the lack of eaves within minimal portions of the side elevations is acceptable.

C1.25 Plant, equipment boxes and lift overrun

Description of non-compliance:

The proposal provides insufficient information in relation to the following control:

Where provided, plant and equipment boxes, air conditioning units and lift over-runs are to be integrated internally into the design fabric of the built form of the building.

Merit consideration

The proposal includes the provision of two (2) lifts. Neither of these lifts have an over-run shown on the architectural plans. Despite this, it is noted that numerous small scale residential lifts used in dwelling houses do not have lift over-runs and it is assumed that the selected lifts will be of this nature. As such, the absence of an overrun shown on the plans does not form a reason for refusal of the DA.

D1.1 Character as viewed from a public place

Discussion

The proposal is compliant with the controls for this section, as they primarily relate to the appearance of the building from the street. Despite this, the rear of the site has a frontage to the Pittwater waterway, which is a public place and discussed elsewhere throughout this report.

D1.9 Side and rear building line

Description of non-compliance

The proposal is contrary to the following control:

Land zoned R2 Low Density Residential, R3 Medium Density Residential or E4 Environmental Living:

- 2.5 at least to one side; 1.0 for other side

The proposal nominates the southern side to have a 2.5m setback and the northern side to have a 1m setback. The proposal is generally compliant with these controls, however, features elements that are non-compliant on each side as follows:

Southern side (2.5m requirement):

- 1m to lift on all floors
- 1m to balcony planter boxes on all floors

Northern side (1m requirement):

- 600mm to balcony planter boxes on second and third stories – refer to **Figure 30** below.

Merit consideration

The outcomes of the control are reproduced below:

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

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

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

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

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

Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)

Flexibility in the siting of buildings and access. (En, S)

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

A landscaped buffer between commercial and residential zones is achieved. (En,S)

The proposal does not satisfy various outcomes of the control for the following reasons:

- Side setbacks as little as 600mm are an unacceptable response to the designed future character of the local area, as described above.
- The bulk and scale of the dwelling is not acceptable, clearly demonstrated by non-compliances with the building envelope control and the height of buildings development standard. The non-compliant setbacks further exacerbate the non-compliant building envelope.
- The setbacks in conjunction with the building envelope result in non-compliant solar access for the neighbouring southern site at 177 Riverview Road.

As the development does not satisfy the desired outcomes, the non-compliances cannot be justified and form reasons for refusal of the DA.

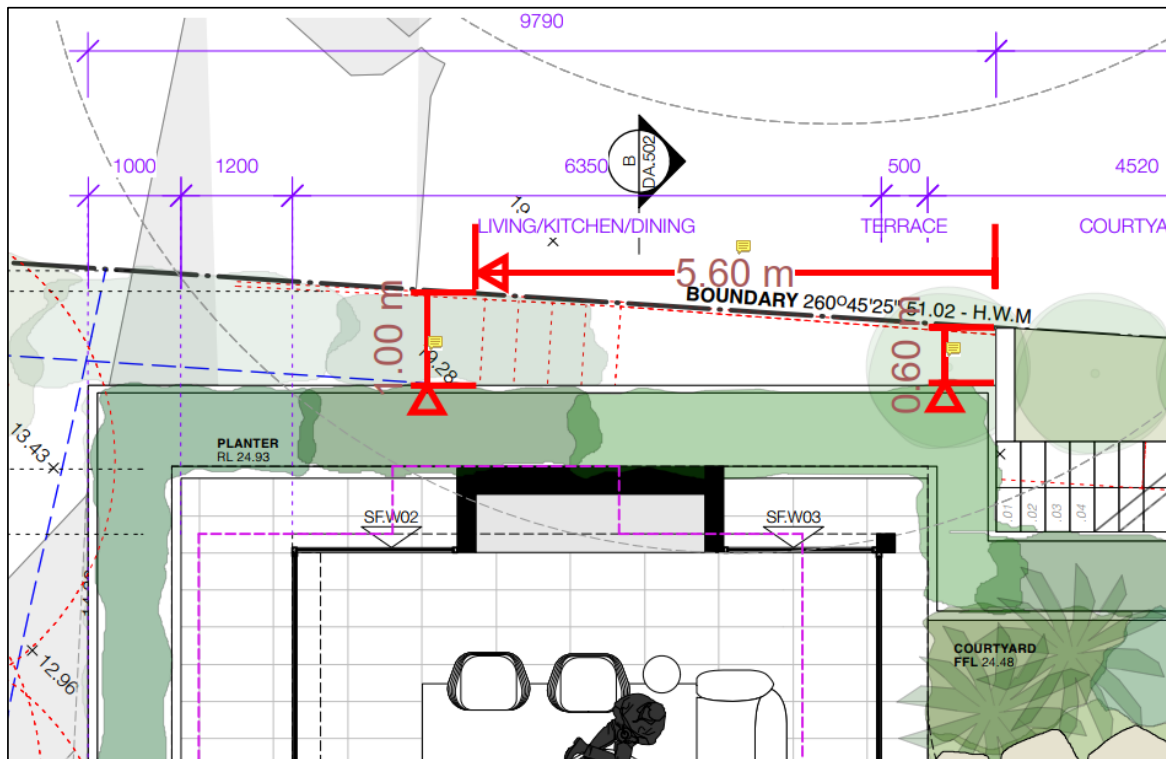


Figure 30 Extract of the third storey floor plan showing the extend of the building setback less than 1m from the northern boundary. At the eastern edge, the balcony is only setback 600mm from the boundary. This setback noncompliance is replicated on the second storey below.

Source: CPS markup of southern elevation (Madeleine Blanchfield Architects, December 2024).

D1.11 Building envelope

Description of non-compliance

The proposal is contrary to the following control:

Planes are to be projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height (refer to Pittwater Local Environmental Plan 2014).

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.
- Eaves or shading devices that provide shade in summer and maximise sunlight in winter, shall be permitted to extend outside the building envelope.

Merit consideration

The calculated building envelope has been projected onto the northern and southern side elevations to determine the extent of the building that does not comply with the building envelope control. This is shown in **Figure 31** and **Figure 32**, where the portion of the building that extends beyond the drawn red line is non-compliant.

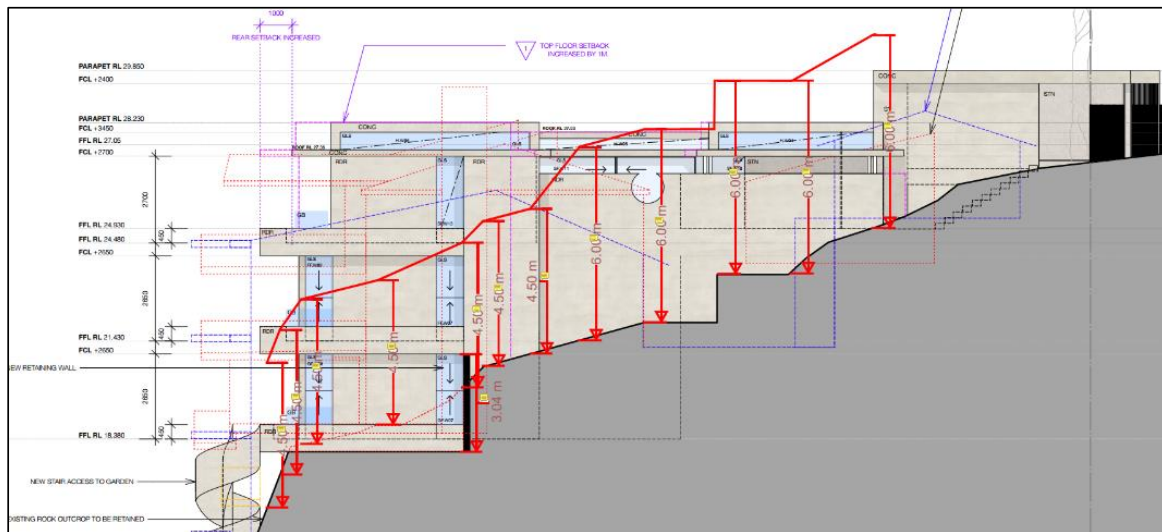


Figure 31 Excerpt of Southern Elevation with the building envelope shown in red.
Source: CPS markup of southern elevation (Madeleine Blanchfield Architects, December 2024).

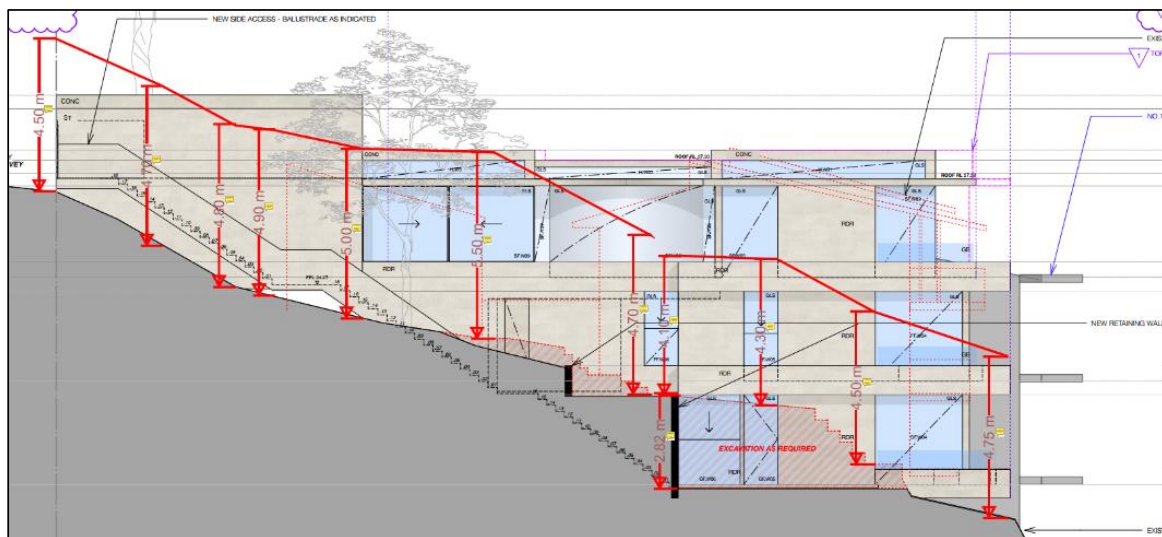


Figure 32 Excerpt of Northern Elevation with building envelope shown in red.
Source: CPS markup of southern elevation (Madeleine Blanchfield Architects, December 2024).

The building footprint is situated on a slope over 16.7°, being 20.35°, and can therefore have a variation to the control. Despite this, the extent of the building that lies beyond the projected building envelope is too great and cannot be justified, especially considering non-compliances with other built form controls including height and setbacks, along with being contrary to the desired character controls for the Avalon Beach Locality which outline a preferred two-storey built form integrated with the landform.

The NatHERS Certificate allows for eaves and shading devices (used as balconies) to extend beyond the standard building envelope. However, even with these extensions factored in, the building remains significantly outside the permitted envelope.

Due to the building envelope being measured from the existing ground level, the proposed extensive excavation results in the built form appearing substantially bulkier than permitted. The discrepancy between the envelope and the new ground level amplifies the perceived breach.

The outcomes of the control are reproduced below:

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

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

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

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

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

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

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

The non-compliant building envelope is also contrary to various outcomes of the control for the following reasons:

- The building is not consistent with the desired two-storey scale of the Avalon Beach Locality, with the majority of elements which protrude above the projected envelope located within the third storey.
- The development does not appropriately manage the constraints of the site and relies upon extensive excavation, rather than the stepping of the built form across the site. This results in a bulky design that is non-compliant with the suite of built form controls due to the poor response to the existing characteristics of the natural environment.
- The non-compliance with the building envelope control results in poor solar access for the neighbouring southern dwelling at 177 Riverview Road. If the dwelling was designed to include more stepping and conform to the topography of the site, solar access to this neighbouring dwelling, particularly its upper-level living area and adjoining balcony (private outdoor space) would be greatly improved.

As the development does not satisfy the desired outcomes, the non-compliances cannot be justified and form reasons for refusal of the DA.

D1.17 Construction, Retaining walls, terracing and undercroft areas

Description of non-compliance

The proposal is contrary to the following control:

Retaining walls and terracing shall be kept to a minimum. Where retaining walls and terracing are visible from a public place, preference is given to the use of sandstone or sandstone like materials.

Merit consideration

The development includes the provision of large retaining walls within the side setbacks to manage the level of excavation proposed for the dwelling. The retaining wall adjoining the southern boundary is 3m in height. There are two retaining walls adjoining the northern boundary, one being 0.9m in height and the second being closer to 3m in height. This creates large contrasts in the ground level, where the large vertical drops are unresolved on the neighbouring sites. The materials of the retaining walls have also not been indicated. Refer to **Figure 33** for a markup of the elevation plans showing the retaining wall heights.

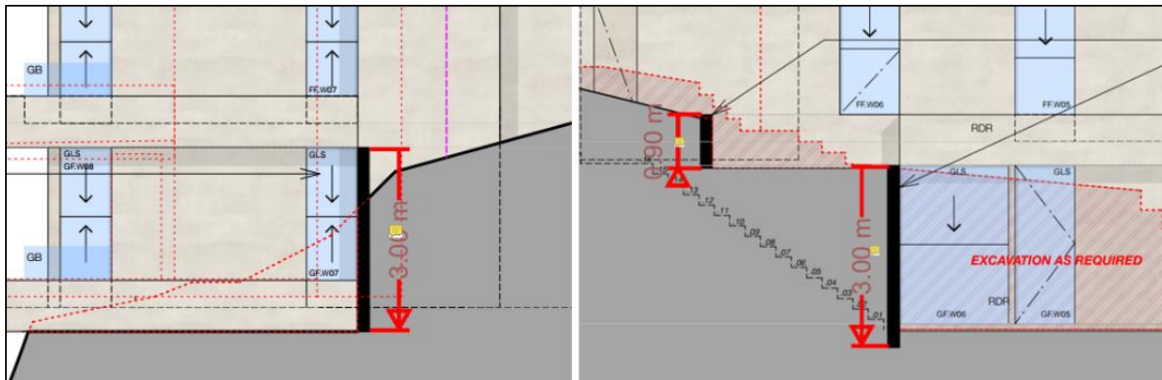


Figure 33 Excerpt of southern elevation (left) and northern elevation (right). Retaining wall heights shown in red.
Source: CPS markup of elevation plans (Madeleine Blanchfield Architects, December 2024).

The proposal also does not indicate whether side boundary fences are to be erected, in which case could result in an additional 1.8m atop the retaining walls, presenting a potential maximum 4.8m vertical wall on the boundary. This demonstrates a poor method of managing the proposed earthworks that results in adverse safety impacts to neighbouring properties.

The desired outcomes of the control are reproduced as follows:

- To achieve the desired future character of the Locality.*
- To protect and minimise disturbance to natural landforms.*
- To encourage building design to respond sensitively to natural topography.*

The proposed earthworks are contained within the site, however the extent of earthworks and the use of large retaining walls within the side setbacks gives rise to a poor cross boundary relationship which disturbs the natural landforms and does not respond sensitively to the natural topography. Given the desired future character of the locality is to promote development that conforms to the landform and respects the natural landscape, the proposed retaining walls are contrary to this objective. As such, the retaining walls cannot be supported due to disturbance of the landform and insufficient detail in relation to the cross boundary relationship between adjoining sites.

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 \$54,085 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,408,484.

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 Environmental Plan 2014;
- Pittwater 21 Development Control Plan; and
- Codes and Policies of Council

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects and other documentation supporting the application. The development is unacceptable for the following reasons:

- The development contravenes the building height development standard with a height of 10.39m, resulting in a 22.23% variation. The proposal has not submitted a Clause 4.6 variation request to demonstrate sufficient environmental planning grounds for the height exceedance.
- The development has not demonstrated it is consistent with the zone objectives contained within the PLEP 2014. The bulk and scale of the development is not appropriate for the zone and locality and does not respect the existing landform and landscape.
- The development has not demonstrated it is consistent with the aims of the PLEP 2014. The development results in amenity impacts on surrounding properties, particularly solar access impacts to the southern neighbouring dwelling.
- The development proposes extensive excavation and the provision of large retaining walls with unresolved vertical drops within the side setbacks.
- The development is non-compliant with the suite of built form controls, including the height of buildings development standard, and the DCP controls including side setbacks and building envelope.
- The development is not consistent with the desired future character of the Avalon Beach Locality, which emphasises the importance of the two-storey built form and the stepping of development to conform to the existing landform.
- The development results in unreasonable impacts on surrounding properties as outlined within this report.

PLANNING CONCLUSION

This proposal, for demolition works and construction of a dwelling house and associated site works is referred to the Northern Beaches Development Determination Panel (DDP) as the application was previously determined by the DDP, and the building height continues to contravene the development standard.

The combined effect of the excessive building height and non-compliant side setbacks results in an unacceptable bulk and scale, creating a building envelope that dominates the site and negatively impacts the surrounding environment. Specifically, the proposed design fails to adequately address solar access for the neighbouring property at 177 Riverview Road. Furthermore, the extensive excavation of rock outcrops and the necessity for large retaining walls create an undesirable cross-boundary relationship and compromise the desired character of the Avalon Beach Locality.

While the applicant's design intent is acknowledged, the current configuration is flawed. A more compliant built form, maintaining the essence of the proposal, is achievable through reconfiguration of floor space, notably by reducing or eliminating third-storey courtyard elements and recessing the living areas. This would facilitate a terraced design that better responds to the topography of the land and relevant built form controls.

In its present state, the proposal fails to meet the objectives of the applicable development standards, resulting in unreasonable impacts on adjoining properties, the natural environment, and the established character of the area. Therefore, the proposal is recommended for refusal.

RECOMMENDATION

That Northern Beaches Development Determination Panel as the consent authority refuse REV2024/0031 for demolition works and construction of a dwelling house and associated site works at Lot 3 DP 236812, 179 Riverview Road, Avalon Beach, for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the

proposed development is inconsistent with the provisions of Clause 4.3 Height of buildings of the Pittwater Local Environmental Plan 2014.

Particulars

- a) *With a building height of 10.39m, the proposal contravenes the building height development standard under clause 4.3(2) of the Pittwater Local Environmental Plan 2014.*
 - b) *The proposal fails to satisfy the provisions of clause 4.3(2D) of the of the Pittwater Local Environmental Plan 2014 and consequently does not benefit from the 10m building height standard under this subclause.*
 - c) *Regarding clause 4.6 of the Pittwater Local Environmental Plan 2014, the applicant has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances. The applicant has also not demonstrated there are sufficient environmental planning grounds to justify the contravention of the development standard.*
2. *Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.3 Earthworks of the Pittwater Local Environmental Plan 2014.*

Particulars

- a) *The proposed earthworks result in retaining walls up to 3m high along the side boundaries with large vertical drops unresolved to the neighbouring property.*
 - b) *The proposal also does not indicate whether side boundary fences are to be erected.*
 - c) *This results in a poor cross boundary relationship that gives rise to safety and amenity impacts.*
3. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent following provisions within the Pittwater 21 Development Control Plan.*

Particulars

- a) *A4.1 – Avalon Beach Locality – the proposal is contrary to the desired character statement for the Avalon Beach Locality.*
 - b) *B5.15 – Stormwater – The stormwater plans omit any details regarding the side boundary retaining walls depicted in the architectural plans.*
 - c) *C1.4 – Solar Access – Contraventions to the building height, building envelope, and setback controls unreasonably reduce solar access to the neighbouring dwelling at 177 Riverview Road.*
 - d) *D1.9 – Side and rear building line – The inability to comply with side setback controls result in a built form outcome that discords with the character of the area and unduly overshadows neighbouring property.*
 - e) *D1.11 – Building envelope – Significant non-compliance with the building envelope controls result in a built form outcome that discords with the character of the area and unduly overshadows neighbouring property.*
4. *Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest*

FINAL DECLARATION

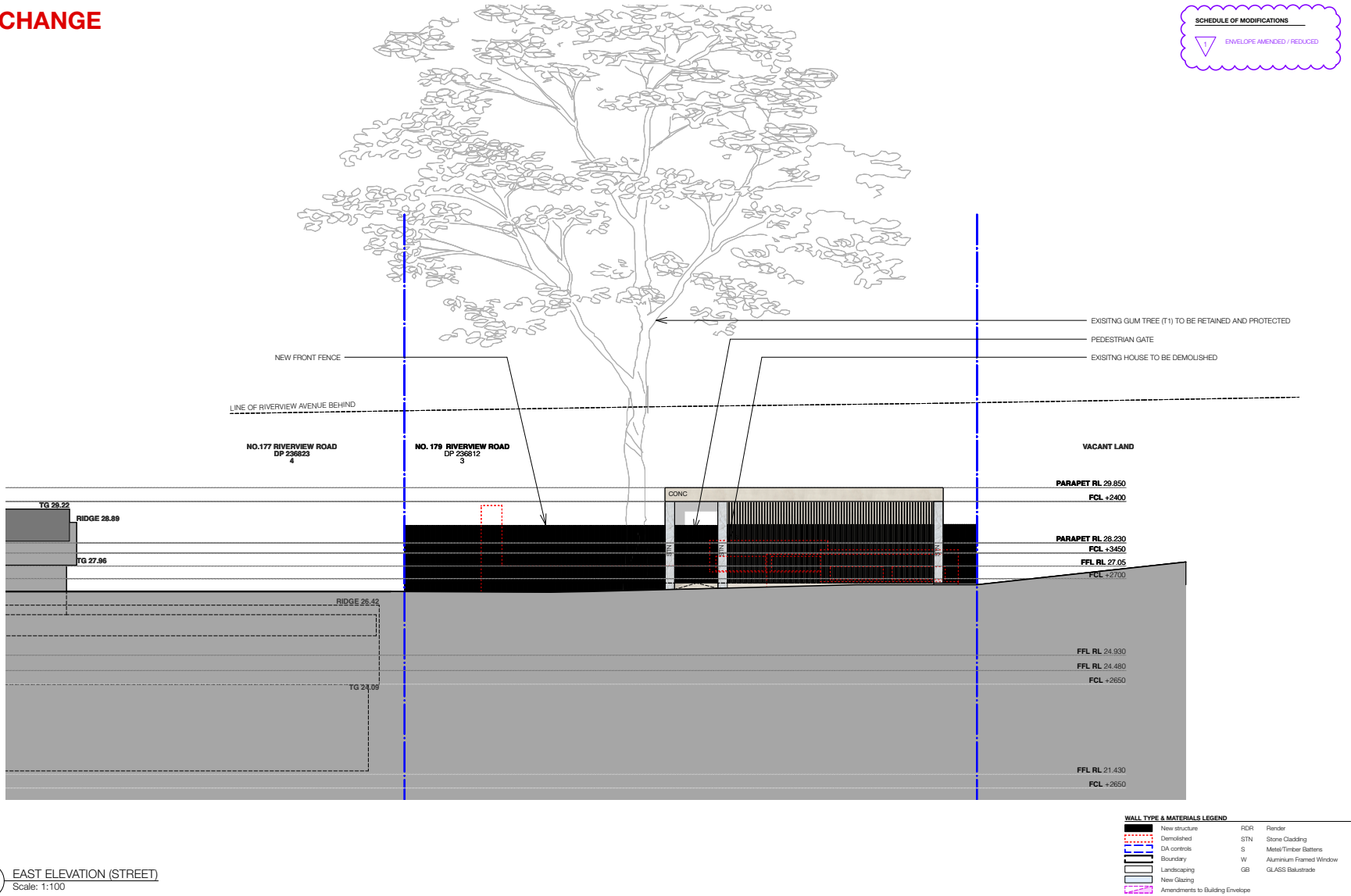
Consultant Name: Ben Tesoriero, Creative Planning Solutions

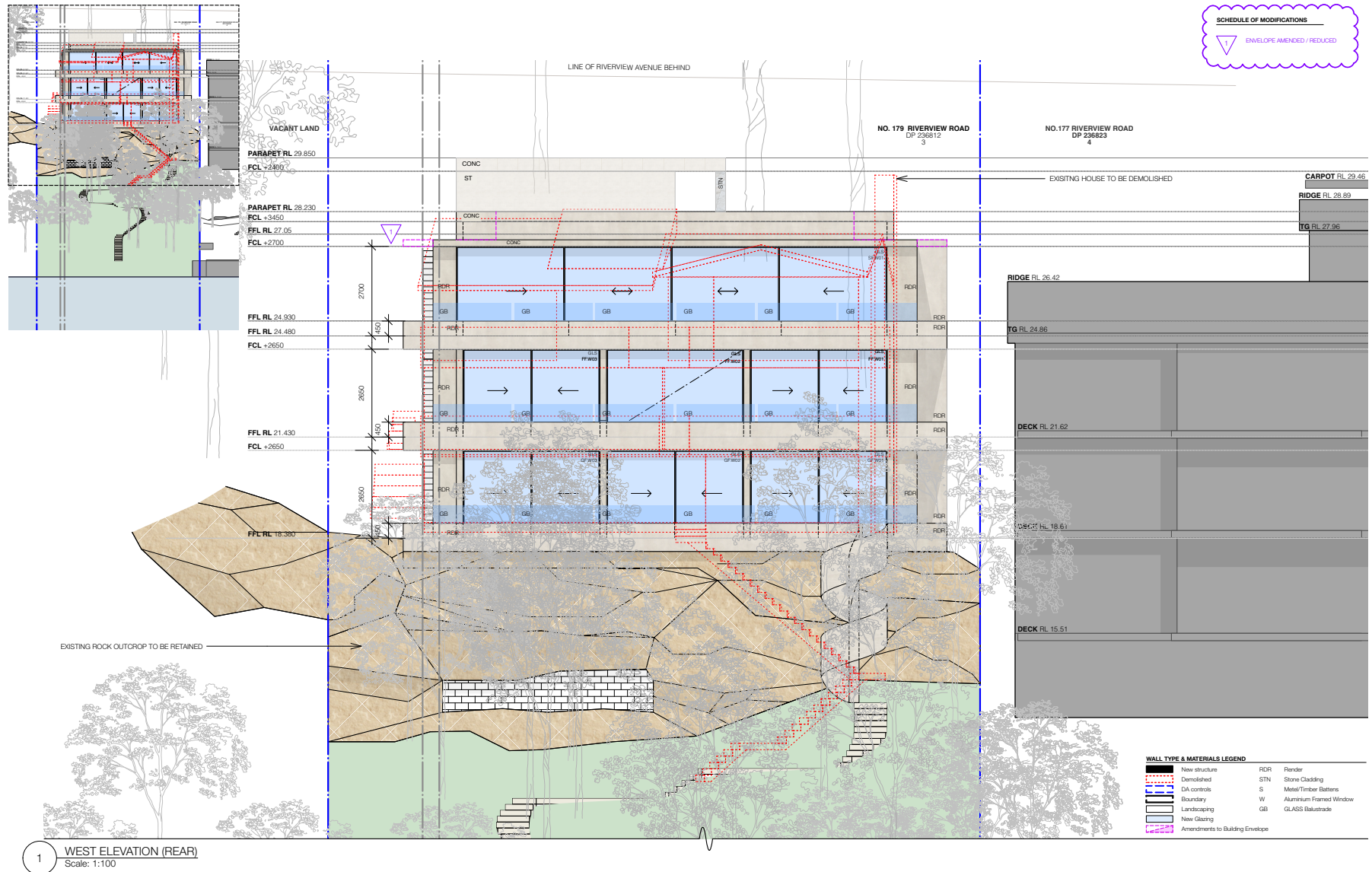
In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation.

A handwritten signature in black ink, appearing to be 'BT', with a long horizontal line extending to the right.

Ben Tesoriero
Consultant Planner

NO CHANGE

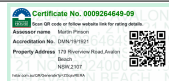




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General Notes:
All Works To Be In Accordance With Australian Standards, The Building Code Of Australia, Other Relevant Codes And With Manufacturers Instructions.
This Drawing Is Copyright And May Not Be Used Without Written Consent.
Do Not Scale Off Drawings. Verify All Dimensions On Site Prior To Construction.
To Be Read In Conjunction With All Other Consultant's Drawings.
The Architect To Be Immediately Notified Of Any Discrepancies.



A FOR REVIEW OF DETERMINATION
REV. FOR

JL DEC 24
DRAWN DATE

0 1 2 3 4 5 M

DEVELOPMENT APPLICATION

Drawing:
REAR ELEVATION (WEST)

Scale:
1:200 @ A3

Date:
DECEMBER 2024

Drawing:
DA-402

Rev.
A

