

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 26 MARCH 2025

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 26 March 2025
via teleconference xommencing at 10:00 AM**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of the Development Determination Panel Meeting held on 13 March 2025	2
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS	4
3.1	REV2024/0027 - 7 Parr Avenue, North Curl Curl - Review of Determination of Application DA2023/0958 for Demolition works and construction of a dwelling house including swimming pool and garage.....	4
3.2	REV2024/0028 - 7 Parr Avenue, North Curl Curl - Review of Determination of Application DA2023/0959 for Demolition works and construction of a dwelling house including swimming pool and garage.....	39
3.3	DA2023/1853 - 203 McCarrs Creek Road, Church Point - Construction of a secondary dwelling	100
3.4	DA2024/1703 - 37 Osborne Road, Manly - Alterations and additions to a dwelling house	154
3.5	DA2024/1651 - 10 Clarence Street, Balgowlah - Alterations and additions to a semi-detached dwelling	197
3.6	DA2024/1730 - 28 Wanganella Street, Balgowlah - Alterations and additions to a dwelling house	259
3.7	DA2024/1261 - Por 1073/ Spicer Road, Oxford Falls - Construction of a dwelling house including swimming pool, cabana, tennis court, outbuilding and associated landscaping and driveway works.....	321

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 13 MARCH 2025

RECOMMENDATION

The Panel notes that the minutes of the Development Determination Panel Meeting held on 13 March 2025 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 REV2024/0027 - 7 PARR AVENUE, NORTH CURL CURL - REVIEW OF DETERMINATION OF APPLICATION DA2023/0958 FOR DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL AND GARAGE

PURPOSE

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

RECOMMENDATION

That Council as the consent authority grants **deferred commencement approval** to REV2024/0027 for Review of Determination of Application DA2023/0958 for demolition works and construction of a dwelling house including swimming pool and garage on land at Lot 91 DP 14113, 7 Parr Avenue, North Curl Curl, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2025/193046
Attachments	1 Assessment Report 2 Site Plan & Elevations

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2024/0027
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 91 DP 14113, 7 Parr Avenue NORTH CURL CURL NSW 2099
Proposed Development:	Review of Determination of Application DA2023/0958 for Demolition works and construction of a dwelling house including swimming pool and garage
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:	Yes
Applicant:	Sean Clive Gartner
Application Lodged:	04/11/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	13/11/2024 to 27/11/2024
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Deferred Commencement Approval
Estimated Cost of Works:	\$ 1,775,915.00

EXECUTIVE SUMMARY

This Review of Determination application has been made pursuant to Section 8.3 of the Environmental Planning and Assessment Act 1979 regarding the refusal of Development Application No. DA2023/0958, which sought consent for demolition works and the construction of a part two/part three storey dwelling house, including a swimming pool on a future allotment (Lot 1) that was approved under DA2023/0957 (separate development application to the dwelling house), but not formally registered at the time of this assessment.

This review application is referred to the Development Determination Panel (DDP) as the determination of DA2023/0958 was made by the DDP and therefore, the review application is required to be referred to the DDP for determination.

There are currently Class 1 proceedings being undertaken within the NSW Land and Environment Court in relation to the refusal of DA2023/0958. The applicant commenced these proceedings on 5 November 2024 to save the statutory time frame for the assessment and determination of this review application.

The reasons for refusal of DA2023/0958 relate to; building bulk and scale, view loss and insufficient information in relation to stormwater management and vehicular access. These reasons for refusal have been assessed in detail under this review application together with the additional documentation and supporting information submitted with this application. The development proposed under this review application has provided modified side setbacks to comply with Section B3 'Side Building Envelope' of the WDCP, reduced the overall building height by 180mm and provided additional detailing to satisfy the insufficient information concerns in relation to stormwater management and vehicular access.

The application resulted in 4 individual submissions by way of objection. The concerns raised within the submissions relate to; building bulk and scale, view loss, solar reflection, visual privacy, insufficient detailing on the plans in relation to measurement annotations, impacts on available on-street car parking and impacts on the structural integrity of adjoining buildings. The concerns raised within the resident submissions have been assessed throughout the report and are not considered issues that would warrant refusal of the application. Conditions have been recommended where appropriate to address these concerns, particularly in relation to mitigating solar reflections and to ensure that dilapidation surveys are carried out prior to and post development to safeguard any potential damage to adjoining buildings as a result of earthworks.

The assessment concludes that the proposed development has provided a satisfactory response to resolve the reasons for refusal imposed under DA2023/0958. The amendments to the proposed setbacks and reduction in building height results in a built form that satisfies the objectives of the relevant planning controls, while the assessment has identified that the view impacts for the development on Lot 1 are of a negligible to minor scale, with the large extent of view loss occurring from the proposed development on Lot 2 that is not subject to this review application. Updated DRAINS modelling has demonstrated that the on-site detention storage is adequate, while the removal of the 'parking' references from the driveway hardstand will ensure that vehicular access to the site is not hindered.

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

Accordingly, it is recommended that the DDP alter the original decision on the DA and approve the review application, subject to the recommended conditions attached to this report, which include a deferred commencement condition that precludes the consent from being activated until a Subdivision Certificate is issued for Lot 1.

PROPOSED DEVELOPMENT IN DETAIL

The applicant sought approval for demolition works and the construction of a part two/part three storey dwelling house, including a swimming pool located upon a future allotment that has been approved pursuant to Development Consent No. DA2023/0957 but not formally registered with the NSW Land Registrar. This allotment is future Lot 1.

The development application the subject of this review was refused by the DDP on 6 May 2024 for the following reasons:

1. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted in support of the application.

Particulars:

i) The proposed development is inconsistent with Clause C4 Stormwater of the Warringah Development control Plan 2011 as the submitted DRAINS Model prepared for the application consists of errors. The conclusions drawn in the Model cannot be relied upon.

ii) The proposed development is inconsistent with C2 Traffic, Access and Safety as the external parking spaces include in the design will result in an impediment to internal vehicular access. This element shall be deleted from the design.

2. Pursuant to Section 4.15(1)(a)(i) & (iii) and 4.15(1)(b) & (c) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 1.2 Aims of the Plan of the Warringah Local Environmental Plan 2011 and the following controls within the Warringah Development Control Plan: A.5 Objectives, B1 Wall Heights, B3 Side Boundary Envelope, D7 Views, and D9 Building Bulk.

Particulars:

i) The proposed development fails to achieve the numerical requirements and underlying objectives of the controls as listed above, which in conjunction with unacceptable building mass is representative of a built form which has not been designed to complement and integrate with the site's topography nor the site constraints.

ii) The proposal is not considered to be compatible with the height and scale of surrounding and nearby development, nor complement the building line and pattern that is present in the vicinity, despite strict compliance with the maximum building height prescribed under Clause 4.3 of the Warringah Local Environmental Plan 2011. The consequence of this is that the resultant building is incompatible with the prevailing built form. The development results in amenity impacts to surrounding properties.

iii) The proposed development by way of its significant building mass gives rise to an unacceptable impact on views obtained by adjacent properties. It is considered that the impact to these views is not representative of view sharing and that the outcome is contrary to and fails the set within Planning Principle Tenacity v Warringah Council.

iv) A more 'skilful design' which provides the residents of the subject site with a similar development potential and amenity is considered to be achievable through a rationalisation of the building footprint, partial removal and/or modulation of the upper floor storey, as well as a greater and more recessive rear setback, that has regard to, and consideration of the location of such elements on site in relation to view corridors that may be impacted.

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.

Particulars:

i) The extent of non-compliances of relevant controls within the Warringah Development Control Plan and the resultant unreasonable amenity impacts upon adjoining and nearby properties, is such that approval of the proposed development would not be within the public's interest.

Proposed Development under this Review of Determination (REV2024/0027)

The applicant seeks a review of DA2023/0958 for demolition works and the construction of a part two/part three storey dwelling house, including a swimming pool and landscaping.

The development proposed under the subject review application has incorporated the following amendments to the development:

- Minor alterations to the roof form to reduce the maximum roof height from RL43.104 metres (m) to the Australian Height Datum (AHD) to RL42.924m AHD.
- Minor alterations to the floor plate on the first floor of the building, which increase the western setback of the building by 500 millimetres (mm), reduces the eastern setback of the building by 500mm in portions of the floor plate on the north-eastern corner. These amendments have resulted in the building complying with section B3 - Side Building Envelope of the Warringah Development Control Plan 2011 (WDEP).
- Reduction to the height of the external stone wall on the eastern elevation by 660mm.
- Remove references on the architectural site plans pertaining to 'external car parking spaces' on the driveway.

The development on Lot 1 is depicted below in **Figure 1**, which also shows the proposed development on Lot 2 which is subject to a separate review of determination application.

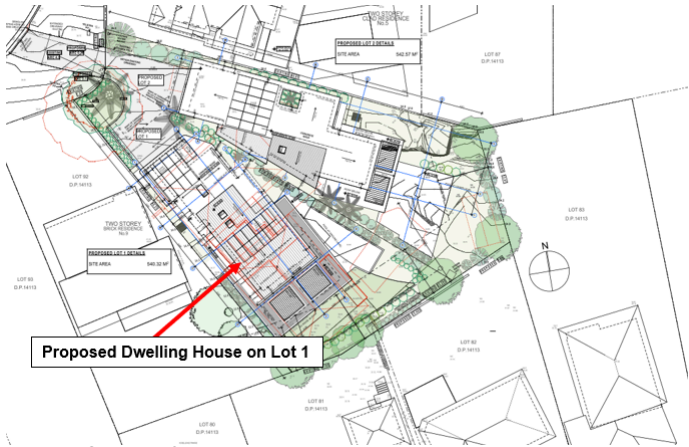


Figure 1 - Site plan of proposed development on Lot 1

In conjunction with the review application, there are currently Class 1 proceedings being undertaken within the NSW Land and Environment Court for the refusal of DA2023/0958. The applicant commenced these proceedings on 5 November 2024 to save the statutory time frame for the assessment and determination of the subject review 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

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
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 - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 91 DP 14113 , 7 Parr Avenue NORTH CURL CURL NSW 2099
Detailed Site Description:	The subject site consists of one allotment located on the south-eastern side of Parr Avenue. The subject site is legally identified as Lot 91 in Deposited Plan 14113 and is commonly known as 7 Parr Avenue, North Curl Curl. The site is irregular in shape with a curved frontage of 9.79 metres (m) and respective depths of 40.31m and 44.61m along the south-western and north-eastern side boundaries. The site has a surveyed area of 1,082.51 square metres (sqm). The proposed Lot 1 where the development is located has an area of 540.32sqm. The site is located within the R2 Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011 (WLEP) and accommodates a part one / two storey dwelling house including an outbuilding, a carport and a swimming pool. The site experiences a fall of approximately 5m that slopes away from the north-eastern side boundary towards the southern rear corner.

	Landscaping on the site comprises of lawn areas, shrubbery and a several small trees adjacent to the front boundary. The site also contains numerous rock outcrops along the north-eastern side boundary. The site is not burdened by any significant environmental constraints or restrictive covenants. The surrounding built environment is characterised by detached low density residential development (i.e. dwelling houses).
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Map:



SITE HISTORY

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

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

Development Application No. DA2023/0957 (Subdivision approval)

On 31 May 2025, the DDP approved Development Application DA2023/0957 with a deferred commencement condition for an inter-allotment drainage easement for demolition works and the alterations and additions to the existing dwelling house, including the subdivision of one lot into two. The approved subdivision layout is depicted in **Figure 2** below.

It is noted that the deferred commencement condition has now been satisfied and the consent is operable.

Additionally, it is noted that DA2023/0957 did not impose any restrictive covenants to limit future development within a prescribed building envelope so as to preserve view corridors.

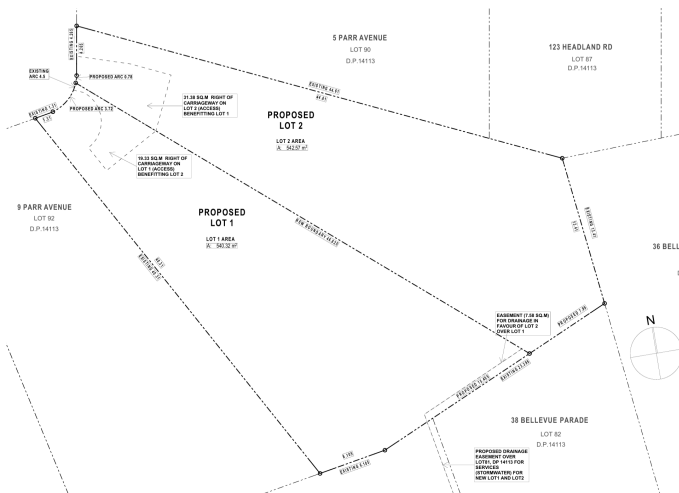


Figure 2 - Approved subdivision layout

The subject review of determination application involves the construction of a new dwelling house on Lot 1.

Development Application No. DA2023/0958

On 5 May 2024, the DDP refused DA2023/0958 for demolition works and construction of a dwelling house, including swimming pool and garage on Lot 1.

The reasons for refusal have been outlined earlier within this report.

The refusal of DA2023/0958 is currently subject to Class 1 proceedings in the NSW Land and Environment Court.

CURRENT REVIEW OF DETERMINATION APPLICATION HISTORY

As part of the assessment of this review of determination application, the assessing officer has undertaken site inspections at the subject site, 5 Parr Avenue and 1 Parr Avenue. The latter site inspections have been undertaken at the request of the respondents to consider view impacts.

The owner of 3 Parr Avenue has not objected to this application. The assessing officer has attempted to inspect this property to no avail.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
In accordance with Section 8.3 of the Environmental Planning and Assessment Act 1979 (EP&A Act), an applicant may request Council to review a determination of a development application or modification 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.

As DA2023/0958 was determined on 6 May 2024, the review would typically be required to be lodged and determined before 6 November 2024, being six months from the date of determination and the relevant period in which any appeal against the refusal may be made to the NSW Land and Environment Court. However, this time has now been extended and will not expire as a Class 1 Application against the refusal of DA2023/0958 has been made with the NSW Land and Environment Court. Therefore, the statutory time frame to assess and determine this review application will not elapse until the Class 1 proceedings have concluded. The Class 1 proceedings have a Section 34AA conciliation conference scheduled for April.

Section 8.3 (3) provides that Council may review a determination if, in the event that 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 'Detailed Description of Works' section of this report. A comparison of the original plans under DA2023/0958 and the plans submitted under this review application 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 scheme is substantially the same as the original proposal and the proposal satisfies the requirement of Section 8.3 (3) of the EP&A Act.

Assessment of Reasons for Refusal under Development Application No. DA2023/0958

The applicant has made amendments to the proposed development and requested that the reasons for refusal of DA2023/0958 be reviewed under this application. These reasons for refusal that are stipulated in the Notice of Determination for DA2023/0958 are examined below to determine if they remain applicable or should be overturned.

1. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted in support of the application.

Particulars:

i) The proposed development is inconsistent with Clause C4 Stormwater of the Warringah Development control Plan 2011 as the submitted DRAINS Model prepared for the application consists of errors. The conclusions drawn in the Model cannot be relied upon.

ii) The proposed development is inconsistent with C2 Traffic, Access and Safety as the external parking spaces include in the design will result in an impediment to internal vehicular access. This element shall be deleted from the design.

Comment:

The review application has appropriately addressed the requirements of this reason for refusal for the following reasons:

- The stormwater management plans submitted with this application have included an updated DRAINS Model to correct the previous errors. Moreover, the stormwater management plans, which seek to convey stormwater from the development downslope via an inter-allotment drainage easement through 40 Bellevue Parade in accordance with the requirements of Development Application DA2023/0957 (which approved the subdivision on the site), have been endorsed by Council's Development Engineers as a compliant stormwater management scheme that meets Section C4 of the Warringah Development Control Plan 2011 (WDCP) and Council's Water Management for Development Policy.
- The external car parking spaces on the driveway have been removed to ensure un-impeded access is maintained to the dwelling house on Lot 1.

For these reasons, this reason for refusal should no longer apply.

2. Pursuant to Section 4.15(1)(a)(i) & (iii) and 4.15(1)(b) & (c) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 1.2 Aims of the Plan of the Warringah Local Environmental Plan 2011 and the following controls within the Warringah Development Control Plan: A.5 Objectives, B1 Wall Heights, B3 Side Boundary Envelope, D7 Views, and D9 Building Bulk.

Particulars:

i) The proposed development fails to achieve the numerical requirements and underlying objectives of the controls as listed above, which in conjunction with unacceptable building mass is representative of a built form which has not been designed to complement and integrate with the site's topography nor the site constraints.

ii) The proposal is not considered to be compatible with the height and scale of surrounding and nearby development, nor complement the building line and pattern that is present in the vicinity, despite strict compliance with the maximum building height prescribed under Clause 4.3 of the Warringah Local Environmental Plan 2011. The consequence of this is that the resultant building is incompatible with the prevailing built form. The development results in amenity impacts to surrounding properties.

iii) The proposed development by way of its significant building mass gives rise to an unacceptable impact on views obtained by adjacent properties. It is considered that the impact to these views is not representative of view sharing and that the outcome is contrary to and fails the set within Planning Principle Tenacity v Warringah Council.

iv) A more 'skilful design' which provides the residents of the subject site with a similar development potential and amenity is considered to be achievable through a rationalisation of the building footprint, partial removal and/or modulation of the upper floor storey, as well as a greater and more recessive rear setback, that has regard to, and consideration of the location of such elements on site in relation to view corridors that may be impacted.

Comment:

The review application has appropriately addressed the particulars of this reason for refusal for the following reasons:

- The development has been amended to ensure compliance with Section B3 'Side Building Envelope' of the WDCP.
- The development remains partially non-compliant with Section B1 'Wall Height' of the WDCP; however, this variation is supportable on merit as the non-compliance does not result in any unreasonably building bulk or scale, nor does it give rise to adverse residential amenity impacts in terms of visual privacy, view sharing, visual bulk or overshadowing. Therefore, the development meets the underlying objectives of Section B1 of the WDCP, thereby enabling flexibility to be applied to the numerical control, consistent with Section 4.15(3A)(b) of the EP&A Act.
- The development is highly articulated, includes varied wall plans and varied external finishes, steps away from the side boundaries as the building height increases and generally steps down in height with the slope of the land. Therefore, the development meets the objectives of Section D9 'Building Bulk' of the WDCP, insofar as the bulk and scale of the building has been appropriately minimised.
- The reason of refusal pertaining to incompatibility with the height and scale of surrounding development is an objective of Clause 4.3 'Height of Buildings' under the WLEP. As the development complies with Clause 4.3 of the WLEP, the development is deemed to satisfy this objective of the height standard. As such, this reason for refusal is not relevant.
- The assessment of this review application, which has included view loss inspections at neighbouring properties, as revealed that the development on Lot 1 results in minimal view loss from surrounding properties. The vast majority of the view loss is a result of the development on Lot 2, which does not form part of this review application. The assessment finds that the development is appropriately sited and scaled to minimise view impacts to neighbouring properties, thereby ensuring that a reasonable view sharing outcome is achieved in accordance with the planning principles established within the NSW Land and Environment Court case of *Tenacity Consulting v Warringah* [2004] NSWLEC 140.

For these reasons, this reason for refusal should no longer apply.

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.

Particulars:

i) The extent of non-compliances of relevant controls within the Warringah Development Control Plan and the resultant unreasonable amenity impacts upon adjoining and nearby properties, is such that approval of the proposed development would not be within the public's interest.

Comment:

The assessment finds that the development is consistent with the aims and objectives of the WDCP and applicable Environmental Planning Instruments, such that the development is of a form, scale and intensity that the community can reasonably expect to occur on the site. Therefore, the development is considered to be in the public interest.

For these reasons, this reason for refusal should no longer apply.

Conclusion

As demonstrated above, the amendments made in this review application have resolved the reasons for refusal for DA2023/0958. Therefore, the review application is recommended for approval.

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 13/11/2024 to 27/11/2024 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 4 submission/s from:

Name:	Address:
Ms Christine Margaret Cronin	1 Parr Avenue NORTH CURL CURL NSW 2099
Mrs Sandra Marshall	123 Headland Road NORTH CURL CURL NSW 2099
Mrs Sharon Elizabeth Billyard Noel Frederick Billyard	5 Parr Avenue NORTH CURL CURL NSW 2099

Name:	Address:
Daniel John Billyard	
Mrs Elizabeth Ann Fraser Hugh David Fraser	36 Bellevue Parade NORTH CURL CURL NSW 2099

Several pieces of correspondence were received amounting to a total of 4 submissions by way of objection. The following issues were raised in the submissions:

- **View Loss**

The submissions raised concerns that the development will result in adverse view loss from surrounding properties.

Comment:

This matter has been discussed in detail within the section of this report relating to Section D7 'Views' of the Warringah Development Control Plan 2011 (VDCP). In summary, the assessment concludes that the development results in reasonable view sharing in accordance with the planning principles established within the NSW Land and Environment Court case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

- **Bulk and Scale**

The submissions raised concerns that the bulk and scale of the development is excessive and will result in unacceptable impacts to the surrounding area.

Comment:

The development is highly articulated, includes varied wall plans and varied external finishes, steps away from the side boundaries as the building height increases and generally steps down in height with the slope of the land. These factors, coupled with the fact that the development complies with several numerical controls that govern the bulk and scale of development on the site (i.e. maximum building height, side building envelope, side setbacks, landscaped open space etc.), result in a built form that will maintain an appropriate visual relationship with the surrounding built environment. As such, the bulk and scale of the dwelling house is considered to be acceptable in the context of the site.

- **Prior Subdivision**

The submissions raised concerns in relation to the previous subdivision that was approved on the site under Development Application DA2023/0957 and how this subdivision has resulted in future impacts on adjoining properties due to the width of the allotments at the front boundary.

Comment:

The merits of the prior subdivision consent are not relevant to this application. This assessment has considered the merits of the proposal in relation to the impacts it causes on adjoining properties. The assessment finds that the impacts are acceptable and can be appropriately mitigated where appropriate through the recommended conditions of consent.

- **Visual Privacy**

The submission prepared from the owners of 123 Headland Road, located approximately 18m to the north-east of the development on Lot 1, has raised concerns in relation to visual privacy impacts from the balconies.

Comment:

The proposed development on Lot 1 will be partially shielded by the development on Lot 2 when observed from the surrounding properties to the north/north-east. Moreover, the significant spatial separation between both properties would ensure there are not adverse visual privacy impacts.

- **Solar Reflections**

The submissions raised concerns that the development will result in adverse solar reflection / glare to adjoining properties.

Comment:

The facade treatment is not considered to generate unreasonable glare. Moreover, a condition is recommended to minimise solar reflections from the roof (i.e. the solar absorbance rating of the roof will need to be 0.43 or greater).

- **Inadequate Annotations on Architectural Plans**

The submissions raised concerns that the architectural plans do not contain adequate annotations on the plans in relation to building depths and widths.

Comment:

The architectural plans are legible, insofar as they contain the levels of the existing ground levels, finished ground levels, finished floor levels, finished ceiling levels and ridge levels to the Australian Height Datum. The plans are also prepared correctly to scale and include the dimensions of the building setbacks. As such, the assessing office is able to correctly identify the building depths and widths.

• **Impacts on On-Street Car Parking**

The submissions raised concerns that the development would impact upon available on-street car parking.

Comment:

Each dwelling contains a double garage to park two vehicles, which complies with the WDCP car parking requirements. As such, it is considered that the development would not unreasonably constrain available on-street car parking.

• **Impacts on Structural Integrity of adjoining Buildings**

The submissions raised concerns that the development may impact upon the structural integrity of adjoining buildings and a request for dilapidation surveys to be carried out was requested in a submission.

Comment:

Given a moderate amount of earthworks is proposed on Lot 1, a condition is recommended requiring dilapidation surveys to be carried out prior to and post construction at the three adjacent sites to Lot 1 (9 Parr Avenue, 38 Bellevue Avenue and 40 Bellevue Avenue).

The concerns raised above have been appropriately addressed and resolved, where appropriate by recommended conditions. The concerns do not warrant refusal of the application or a further redesign.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	SUPPORTED WITH CONDITIONS The Lot 1 Landscape Referral review of the development application is undertaken by an alternate officer. The application seeks consent for demolition works and construction of a dwelling house including swimming pool and garage .within Lot 1 as identified in the Site Plans. An Arboricultural Impact Assessment (AIA) report and a Landscape Plan is submitted for consideration. Existing trees identified in the AIA as T1, T2 and T3 are located in the proposed Lot 1. It is noted that the AIA reports this lot as Lot 2. An existing street tree identified as T4 fronts Lot 1 and there is one neighbour tree identified as T5 is property No. 9 Parr Avenue. There is no impact to T4 within the road reserve verge and conditions are able to be imposed for street tree protection. There is no impact from the proposed development works to existing tree 5 within neighbouring property. Within the property the AIA report includes recommendations to retain the T2 which is a prescribed tree protected by the DCP and the AIA report identifies T1 and T2 as exempt species that do not require Council consent for management or removal. Landscape Referral raise no concerns with the AIA report. The Landscape Plan provided indicates landscape design elements to the 'landscaped area' to satisfy Warringah control D1, with planting design layout and quantities. The Landscape Plan provides notation the the existing Melaleuca identified in the AIA report as T2 is to be removed and replaced. The AIA does not provide any justification for removal of T2 and this existing tree shall be preserved. T2 is a tall trunked species and the proposal to provide an additional native tree within the frontage is supported for this reason as any new planting will provide softening from the ground level and upwards. The landscape setting outcomes are able to be supported by Landscape Referral, subject to conditions of consent.
NECC (Development Engineering)	SUPPORTED WITH CONDITIONS 5/12/2024 Stormwater Council's Development Engineer requests additional information as detailed below. A copy of revised DRAINS model hasn't been submitted to Council for assessment as per Development Engineering comments for DA2023/0958. 7/01/2025 Planner is requested to provide a condition of consent to require proof of creation of Lot 1 with NSW Land Registry Services since this application is reliant upon, prior to the issue of any construction certificate. The stormwater management has been reviewed. No development Engineering objections subject to the conditions of approval. It is to be noted that the subdivision conditions of consent DA2023/0957 are to be complied, prior to the activation of DA2023/0858 (construction of dwellings on Lo1 and Lot2). This is required, in order that all public utility services, inter-allotment drainage and access are provided for the proposed lots.

Internal Referral Body	Comments
NECC (Water Management)	SUPPORTED WITH CONDITIONS This application was assessed in consideration of: • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WMD Policy); and • Relevant LEP and DCP clauses The proposal is for demolition and construction of a residential development intended for Lot 1. Section 4.0 of the WMD Policy applies. Water sensitive urban design, water reuse and infiltration into the soil, and the resulting quality of stormwater leaving the site are interconnected concepts that guide a merit-based assessment under the section. The proposed stormwater plan includes features to retain water and encourage infiltration. Note, water from the proposed pool must not enter the stormwater system. No objections regarding water management
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

The proposed development takes place on a newly subdivided allotment that was approved prior to the coming into force of this policy. Hence, this policy is not applicable for this assessment.

SEPP (Sustainable Buildings) 2022

The BASIX Certificate lodged with the original development application was submitted. The applicant has provided written correspondence arguing that the BASIX legislation allows amendments to a design during assessment or construction if *“the amendment results in the proposed development not differing materially from the description contained in the existing BASIX certificate”*. As such, the applicant's contends that a revised BASIX Certificate is not required.

The assessing officer concurs with the justification provided by the applicant and considers the original BASIX Certificate to be adequate for the following reasons:

- The dwelling is materially the same in terms of layout, numbers of bedrooms, living rooms, etc.
- The orientation of the dwelling remains the same.
- All window areas, and orientations remain the same.
- No changes to any Water use specifications to the BASIX Certificate.
- No changes to any Energy use specifications in the BASIX Certificate.
- No changes to any materials, windows or components in the Thermal Comfort areas of the BASIX Certificate.

The BASIX Certificate is also valid as it was lodged within 3 months of submitting the development application that this subject review application is considered against.

A condition is recommended to ensure compliance with the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Chapter 2 - Infrastructure

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report. With these conditions in place, the development will satisfy the requirements of State Environmental Planning Policy (Transport and Infrastructure) 2021.

SEPP (Biodiversity and Conservation) 2021

Chapter 2 - Vegetation in non-rural areas

Chapter Two of State Environmental Planning Policy (Biodiversity and Conservation) (BC SEPP) applies to the development pursuant to clause 2.3 and aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 2.3 has been considered and the development does not propose the removal of any prescribed vegetation in order to facilitate the development and therefore, no further consideration of Chapter Two is required.

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.

The assessment of Development Application DA2023/0957, which approved Lot 1 where the dwelling house is proposed, concluded that the site was suitable for residential land use due to the historical use of the site for residential purposes. In this regard, the assessment finds that the site is suitable for the residential land use and that the site poses no contamination risk.

The development satisfies the relevant considerations under Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021.

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 (max)	8.5m	-	Yes

Compliance Assessment

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

Detailed Assessment

Zone R2 Low Density Residential

The development involves the construction of a dwelling house, which is a permissible land use with development consent in the R2 Low Density Residential zone.

The assessment finds that the development is consistent with the objectives of the R2 zone, insofar as the development will provide for the housing needs of the community within a low density residential environment and the development will provide a landscaped setting that is commensurate with the established landscaped setting of the local, given the scheme provides deep soil landscaping and vegetation planting around the curtilage of the building.

6.2 Earthworks

The development involves excavation and filling to facilitate the proposed dwelling house. In this regard, Clause 6.2 of the WLEP is applicable to the assessment.

The objectives of Clause 6.2 read as follows:

(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 earthworks are not of a great significance that would disrupt existing drainage patterns and soil stability in the locality. The Geotechnical Site Investigation (GSI) (prepared by Crozier Geotechnical Consultants, dated 20 January 2023) and subsequent addendum report (dated 24 October 2024) have concluded that the proposed development will result in acceptable risk with respect to geotechnical risk and soil stability. Several recommendations for construction have been outlined within the GSI to mitigate any risk. These recommendations have been adopted as recommended conditions of consent.

(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:

Suitable conditions are recommended to ensure that the quality of fill imported on site is of suitable quality and to ensure that the excavated soil is classified in accordance with the EPA's Waste Classification Guidelines before being disposed of at an approved waste management facility.

(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, while further conditions are recommended to mitigate construction noise, dust and erosion impacts.

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

The 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.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the jurisdictional requirements under Clause 6.2 of the WLEP.

6.4 Development on sloping land

The site is located within Area B on the WLEP Landslip Risk Map. Therefore, Clause 6.4 of the WLEP is applicable the assessment.

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

Comment:

As previously detailed in this report, the GSI and subsequently addendum report have concluded that the proposed development will result in acceptable risk with respect to geotechnical risk and soil stability. Several recommendations for construction have been outlined within the GSI to mitigate any risk. These recommendations have been adopted as recommended conditions of consent.

In this regard, the assessment finds that the risk associated with respect to landslides in relation to property and life are acceptable and will be appropriately mitigated by the recommended conditions of consent.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site

Comment:

As previously outlined within this report, Council's Development Engineers are satisfied that the stormwater management scheme accords with Council's Water Management for Development Policy. Therefore, it is considered that the development will not cause significant detrimental impacts due to stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment:

The GSI submitted with this application concluded that geotechnical testing did not result in interactions with ground water. As such, the development will not affect existing subsurface flow conditions.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the jurisdictional requirements under Clause 6.4 of the WLEP.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m maximum	8.1m	12.5%	No
B3 Side Boundary Envelope	5m / 45 degrees (north-east)	Within Envelope	-	Yes
	5m / 45 degrees (south-west)	Within Envelope	-	Yes
B5 Side Boundary Setbacks	0.9m (north-east)	1m - 6m	-	Yes
	0.9m (south-west)	1m - 3.25m	-	Yes
B7 Front Boundary Setbacks	6.5m	11m	-	Yes
B9 Rear Boundary Setbacks	6m	5.24m (deck) - 10.6m (facade)	12.67%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	40.26% (217.52sqm)	-	Yes

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	Yes	Yes
B9 Rear Boundary Setbacks	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	No	Yes
D9 Building Bulk	No	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
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

Section B1 of the WDCP requires that the external walls of buildings, when measured from the existing ground level to the upper ceiling level, do not exceed a height of 7.2m.

The external wall height on the north-eastern elevation of the dwelling house has a varied wall height between 5.5m - 7.2m and is therefore compliant. However, the south-western elevation of the dwelling house has a varied wall height between 6m - 8.1m, thereby exceeding the numerical requirement of this control. Importantly, the non-compliance is confined to the rear south-eastern corner of the first floor where the slope of the land falls away.

Merit consideration:

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

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

Comment:

The proposed dwelling house presents to Parr Avenue as a two storey building that is below the WLEP height of buildings standard development standard and WDCP wall height provision. The bulk and scale of the building has been offset through the use of facade articulation, varied side setbacks, varied external finishes, stepping in of upper levels from the side boundaries and generally stepping the building height down with the slope of the land to integrate with the natural landform and landscape.

The non-compliance is confined to the south-western rear corner of the first floor, which does not obstruct any view corridors from surrounding properties or result in a significant visual intrusion to the adjoining dwelling house at 9 Parr Parade (south-western adjoining property), given this portion of the building is stepped back 3.25m from the side boundary and within the prescribed side building envelope control. The view corridor from 9 Parr Parade is also located to the south-east of this property, which the subject site and proposed building do not intersect through.

For these reasons, the assessment finds that the visual impacts of the development have been appropriately minimised.

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

Comment:

The height of the building is located below the established tree canopy level within the locality.

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

Comment:

As previously advised, the non-compliance is located on the south-western side of the building. This side of the building does not obstruct view corridors from the northern adjoining properties, noting that the minimal view impacts are created by the north-eastern elevation of the building which complies with the WDCP wall height control.

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

Comment:

The non-compliance is confined to the south-western rear corner of the first floor, which does not obstruct any view corridors from surrounding properties or result in a significant visual intrusion to the adjoining dwelling house at 9 Parr Parade (south-western adjoining property), given this portion of the building is stepped back 3.25m from the side boundary and within the prescribed side building envelope control.

The wall height breach also does not result in adverse overshadowing of the south-western adjoining property, noting that this property will maintain the required 3 hours of sunlight to private open space in accordance with the WDCP. The non-compliance also does not result in adverse privacy impacts to this adjoining property, given window W1-21, which exceeds the wall height control, includes a privacy screen to mitigate overlooking to the elevated deck at 9 Parr Parade.

Overall, the assessment finds that the wall height non-compliance does not result in adverse residential amenity impacts to surrounding properties.

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

Comment:

As outlined above, the development integrates well with the natural landform and landscape through generally stepping the building height and mass down with the slope of the land to respond to the natural topography.

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

Comment:

A varied skillion roof form has been proposed, which provides visual interest and appropriate variation in roof design.

Having regard to the above assessment, it is concluded that the proposed development achieves the underlying objectives of Section B1 of the WDCP, notwithstanding the technical non-compliance.

Therefore, flexibility has been applied to the numerical requirements of Section B1, consistent with Section 4.15(3A)(b) of the EP&A Act, which requires the consent authority to be flexible in applying numerical / prescriptive requirements within a Development Control Plan (DCP) if the underlying objectives of the DCP control are achieved through an alternative design.

B9 Rear Boundary Setbacks

Description of non-compliance

Section B9 of the WDCP requires the development to be setback at least 6.5m from the rear boundary. The development is predominantly compliant with this requirement; however, the southern corner of the ground floor rear deck is setback 5.24m from the rear boundary. **Figure 3** below depicts the extent of non-compliance.



Figure 3 - Rear setback non-compliance shaded in red

Merit Consideration

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

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

Comment:

The development complies with Section D1 'Landscaped Open Space' of the WDCP. In this regard, it is considered that adequate deep soil landscaping is provided on the site. The rear setback area also remains predominantly landscaped.

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

Comment:

The rear setback encroachment is a consequence of the irregular alignment of the rear boundary and is minor in numerical terms, occupying an area of 0.9sqm. This factor, coupled with the fact that the remainder of the rear setback area will be occupied by deep soil landscaping, will ensure that a reasonable sense of openness is maintained in the rear yard.

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

Comment:

The south-western elevation of the ground floor deck, which encroaches into the rear setback area, has incorporated privacy screening to mitigate overlooking into the rear yard of 9 Parr Avenue. Furthermore, sufficient separation has been provided between the ground floor rear deck and the principal private open space on the downslope properties, which will ensure that reasonable levels of privacy are afforded to the downslope

properties to the rear of the site. Overall, this objective is achieved.

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

Comment:

The existing dwelling house on the site is setback 3.1m from the rear boundary. The proposed development is setback substantially greater than the existing building on the site and the non-compliance is a consequence of the irregular alignment of the rear boundary. Moreover, the rear setback area will remain predominantly landscaped, consistent with this control. Overall, it is considered that the development meets this objective.

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

Comment:

As demonstrated above, the rear setback non-compliance does not result in adverse privacy impacts.

Having regard to the above assessment, it is concluded that the proposed development achieves the underlying objectives of Section B9 of the WDCP, notwithstanding the technical non-compliance. Therefore, flexibility has been applied to the numerical requirements of Section B9, consistent with Section 4.15(3A)(b) of the EP&A Act.

D7 Views

The assessing officer has undertaken view loss inspections at 1 Parr Avenue and 5 Parr Avenue, which are located to the north of the subject site (see Figure 4).



Figure 4 - Location of affected properties in relation to the subject site

It is noted that the owners of 3 Parr Avenue objected to the original development application on view loss grounds. However, they have not objected to the subject review application. The assessing officer has contacted the owners of 3 Parr Avenue to arrange a site inspection. However, no response has been received. The assessing officer has also attempted to arrange a site visit at 123 Headland Road but to no avail.

To ascertain the extent of view loss from 1 and 5 Parr Avenue, a site inspection was carried out from the affected properties. No height poles of certified wire diagrams were requested to assist in the view loss assessment for Lot 1, noting that the height pole photos for the original development application were sufficient and that the large extent of view loss would occur from the proposed development on Lot 2. It is noted that the development on Lot 1 has been amended under the review application to reduce the height of the building by 0.18m. As such, the height pole photos that depicted the former proposed building envelope for the development on Lot 1 are sufficient.

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:

1 Parr Avenue

The view corridor is located to the south/south-east from this property and comprises of an obstructed view corridor towards the Queenscliff escarpment and Manly North Head. The obstructions comprise of existing vegetation and existing development located to the south/south-east of 1 Parr Avenue. The views are considered to hold moderate value in accordance with this planning principle, given they are significantly obstructed. The views in question are depicted in **Figures 5-6** below.



Figure 5 - Existing view corridor from the ground floor entertaining deck (standing position)



Figure 6 - Existing view corridor from first floor balcony adjoining bedrooms (standing position)

5 Parr Avenue

The view corridor is located to the south/south-east from this property and comprises of a largely unobstructed view corridor towards the Queenscliff escarpment and Manly North Head including Curl Curl Beach and Curl Curl Lagoon. The views includes the interface between the land and water at Curl Curl Beach and the interface between the headlands and water at North Head and Curl Curl. As the view corridor is largely unobstructed and includes the interface between the land and water, including headland views, the view corridor is considered to be iconic in accordance with this planning principle. The views in question are depicted in **Figures 7-10** below.



Figure 7 - Existing view from ground floor rear deck (standing position)



Figure 8 - Existing view from swimming pool area (standing position)



Figure 9 - Existing view from ground floor living room (standing position)



Figure 10 - Existing view from first floor balcony adjoining a bedroom (standing position)

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:

1 Parr Avenue

The views are enjoyed from standing positions from the ground floor deck that adjoins a living room (i.e. principal private open space area) and a first floor balcony adjoining bedrooms. The views are enjoyed over the southern side boundary of 1 Parr Avenue.

5 Parr Avenue

The views are enjoyed from standing and seated positions from various locations on this property, including the swimming pool area, ground floor living room, deck, kitchen and rumpus room and first floor bedrooms and a balcony. The views are enjoyed over the southern side boundary of 5 Parr Avenue.

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:

1 Parr Avenue

The development on Lot 1 would encroach slightly into the lower foreground of the Queenscliff escarpment view when viewed from the ground floor deck, with all remaining areas of the view being unaffected (see **Figure 11**). As such, the qualitative extent of view loss from this property is considered to be negligible.



Figure 11 - extent of view loss from 1 Parr Avenue (source: view impact photos taken by the assessing officer for DA2023/0958)

5 Parr Avenue

As outlined above, the large extent of view loss from surrounding properties is caused by the development proposed on Lot 2, rather than the development proposed on Lot 1. The envelope of the development on Lot 1 generally follows the footprint of the existing dwelling house on the subject site; however, the proposed dwelling house is setback approximately 3m further from the rear boundary when compared to the existing dwelling house and the height of the building sits 2.034m taller than the apex of the hipped roofline of the existing dwelling house.

With these factors in mind, the extent of view loss from the 5 Parr Avenue will be small portions of the Queenscliff escarpment when viewed from the ground floor kitchen, living and decking areas and first floor balcony, while a small portion of North Head will be lost in addition to the Queenscliff escarpment when standing from a bedroom at the front (i.e. westernmost end of the dwelling) on the first floor (see **Figures 12-14**).



Figure 12 - Approximate extent of view loss from ground floor areas outlined in red (source: view impact photos taken by the assessing officer for DA2023/0958 - height poles identified with yellow arrows are not for any development on Lot 1 that is subject to this review application)

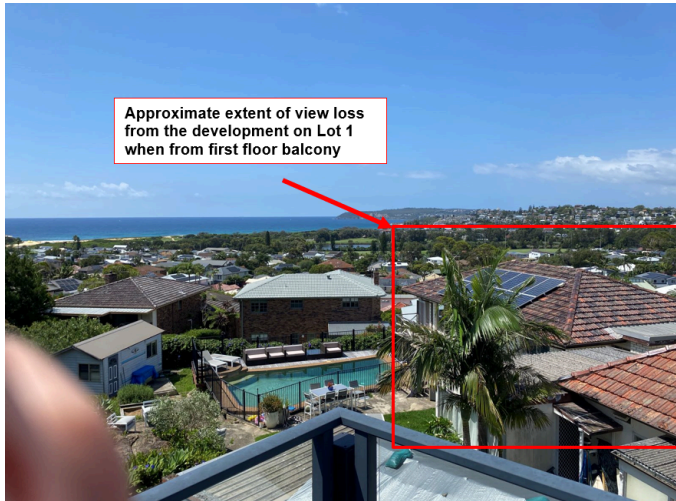


Figure 13 - Approximate extent of view loss from first floor bedroom balcony at rear of the dwelling

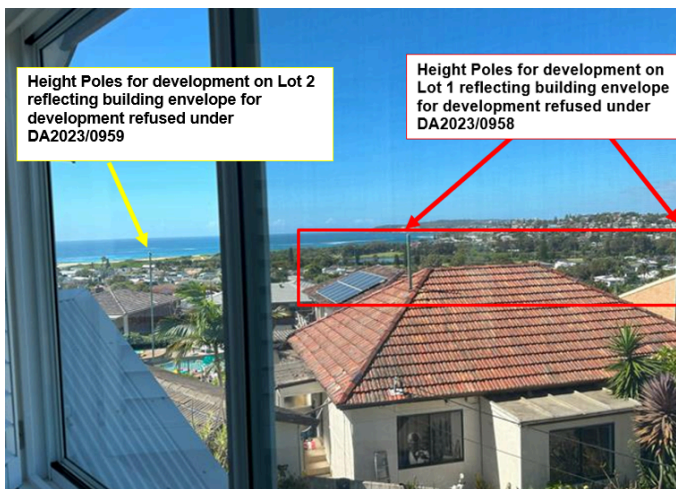


Figure 14 - Approximate extent of view loss from first floor bedroom on westernmost end of the dwelling house outlined in red (source: view impact photos taken by the assessing officer for DA2023/0958 - height poles identified with yellow arrows are not for any development on Lot 1 that is subject to this review application)

Based on the above figures, which demonstrates that a significant extent of the view loss is not caused by development on Lot 1 but rather the proposed development on Lot 2, and noting that the impacts to North Head and significant views that include the interface between the land and water are confined generally to a bedroom, with the primary living rooms and large balcony areas being largely unaffected, and are over a side boundary, the assessment finds that the qualitative extent of view loss caused by the development on Lot 1 from this entire property is **minor**.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The development on Lot 1 is largely compliant with the relevant built form controls under the WLEP and WDCP, with the exception of the wall height control and rear setback control. As demonstrated in the merit assessment under these applicable controls that was carried out earlier within this report, these non-compliances are not the drivers behind the view loss from surrounding properties.

In turning to the application of a 'more skilful design', given the extent of view loss caused by the development on Lot 1 is of a minor scale, the assessment finds that the applicant has employed a skilful design for the development on Lot 1 to minimise view loss on surrounding properties.

In this regard, it is concluded that the development achieves reasonable view sharing in accordance with these planning principles.

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

Comment:

The development is considered to be an innovative design solution that will improve the urban environment.

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

Comment:

The development is not proposing to remove significant trees for the purpose of 'view gain'.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the requirements and objectives of Section D7 of the WDCP and the four planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

D8 Privacy

Description of Non-compliance

While the development has largely been designed to optimised privacy for neighbouring properties, the first floor rear balcony adjacent to the bedroom would enable overlooking into the private open space (decking and rear yard) of 9 Parr Avenue that adjoins the site to the south-west. As such, the development does not satisfy the requirements of this control.

Merit Consideration

The development is considered against the underlying objectives of the control as follows:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The balcony in question is quite large in area and while it adjoins a bedroom, its elevated nature and orientation to maximise the views to the south/south-east would mean that the area would receive high volumes of trafficable movement. As such, the privacy impacts that would occur are not considered to be reasonable.

To mitigate the impact, a condition is recommended to require the south-western elevation of the balcony to be affixed with a privacy screen. This condition would not preclude the occupants from enjoying the views to the south/south-east, but would ensure that a reasonable level of visual privacy is afforded to the neighbours to the south-west.

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

Comment:

The development, as amended via recommended condition, will result in a design that will have an acceptable impact on the existing urban environment.

- *To provide personal and property security for occupants and visitors.*

Comment:

The development, as amended via recommended condition, will provide personal and property security for occupants and visitors of adjoining development and the subject site.

Having regard to the above assessment, it is concluded that the development will achieve the objectives and requirements of Section D8 of the WDCP, subject to compliance with the recommended conditions of consent.

D9 Building Bulk

Description of Non-compliance

Section D9 of the WDCP stipulates that the development should not result in more than 1m of filling on the site. The development results in up to 1.4m of filling in the level lawn area in front of the swimming pool (i.e. between the driveway and swimming pool), which does not satisfy the requirements of this control.

Merit Consideration

The development is considered against the underlying objectives of the control as follows:

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

While non-compliance with Section D9 of the WDCP was included as a recommended reason for refusal under DA2023/0958, this was not due to the extent of filling proposed, but rather due to the distribution of the building mass across Lot 1.

The amended development that is subject to this review of determination application is considered to be an innovative design, insofar as the development is highly articulated, includes varied wall plans and varied external finishes, steps away from the side boundaries as the building height increases and generally steps down in height with the slope of the land. Suitable deep soil landscaped areas with planting have also been provided around the building footprint to soften the built form and result in a landscaped scheme that is commensurate with the established landscaped setting.

For these reasons, the assessment considers that this objective is achieved.

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

Comment:

The bulk and scale of the building has been offset through the use of facade articulation, varied side setbacks, varied external finishes, stepping in of upper levels from the side boundaries and generally stepping the building height down with the slope of the land to integrate with the natural landform and landscape. The development also presents as a two storey building to Parr Avenue, commensurate with the height of adjacent development.

Having regard to the above assessment, it is concluded that the proposed development achieves the underlying objectives of Section D9 of the WDCP, notwithstanding the technical non-compliance. Therefore, flexibility has been applied to the numerical requirements of Section D9, consistent with Section 4.15(3A)(b) of the EP&A Act.

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 \$17,759 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,775,915.

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 demolition works and construction of a part two/part three storey dwelling house, including a swimming pool, has been referred to the DDP due to the application being a Review of Determination of a previous Development Application that was refused by the DDP.

The notification resulted in 4 submissions by way of objection. The issues raised within the submissions relate to; building bulk and scale, view loss, solar reflection, visual privacy, insufficient detailing on the plans in relation to measurement annotations, impacts on available on-street car parking and impacts on the structural integrity of adjoining buildings. The concerns raised within the submissions have been assessed throughout the report and are not considered issues that would warrant refusal of the application, with conditions being recommended to address concerns in relation to solar reflection and the structural integrity of buildings.

The assessment made under the current review application has concluded that the amended development that is subject to this review application has adequately responded to the reasons for refusal imposed under DA2023/0958. The amendments to the built form have appropriately reduced the bulk and scale of the building, which now results in compliance with the WDCP side building envelope control that was previously not complied with.

Additionally, the amended application has resolved the stormwater and vehicular access 'insufficient information' reasons for refusal, while the view loss assessment has identified that the view impacts arising from the development of Lot 1 are of a minor scale. The majority of the view impact is caused by development under a separate DA on Lot 2, which does not form part of this application or the original development application on Lot 1.

Accordingly, it is recommended that the DDP alter the original decision and approve the review application, subject to the recommended conditions attached to this report, which include a deferred commencement condition that precludes the consent from being activated until a Subdivision Certificate is issued for Lot 1.

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. THAT 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 REV2024/0027 for Review of Determination of Application DA2023/0958 for Demolition works and construction of a dwelling house including swimming pool and garage on land at Lot 91 DP 14113,7 Parr Avenue, NORTH CURL CURL, 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. Creation of Lot 1

The Subdivision Certificate must be issued for the creation of the subject allotment, being Lot 1, which was approved by Development Application DA2023/0957. The applicant must provide Council with proof of creation and registration of Lot 1 with the NSW Land Registry Services for activation of this consent.

Reason: To ensure that the development is carried out on a lawfully created lot.

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
DA-101	D	Site Plan	Gartner Trovato Architects	23 October 2024
DA-102	D	Lower Floor Level House 1	Gartner Trovato Architects	23 October 2024
DA-103	D	Ground Floor Level House 1	Gartner Trovato Architects	23 October 2024
DA-104	D	First Floor Plan House 1	Gartner Trovato Architects	23 October 2024
DA-105	D	Elevations & Sections House 1	Gartner Trovato Architects	23 October 2024
DA-106	D	Landscape Plan House 1	Gartner Trovato Architects	23 October 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Arboricultural Impact Assessment titled '7 Parr Avenue, North Curl Curl'	N/A	Treeism Arboricultural Services	December 2022
Geotechnical Report titled 'Report on Geotechnical Site Investigation for Subdivision and Construction of New Dwellings at 7 Parr Avenue, North Curl Curl, NSW'	Project No. 2022-289 Issue No. 0	Crozier Geotechnical Consultants	20 January 2023
Addendum to Geotechnical Report titled 'Geotechnical Assessment of Design Plans to propose works at 7 Parr Avenue, North Curl Curl'	Project No. 2022-289	Crozier Geotechnical Consultants	24 October 2024
BASIX Certificate	1401680M_02	Gartner Trovato Architects	11 July 2023
Waste Management Plan titled 'New Dwelling on proposed Lot 1'	N/A	N/A	N/A
Stormwater Management Plans titled SW1DA-B, SW2DA-A, SW100DA-B and SW200DA-B	DA-B	Barrenjoey Consulting Engineers	5 April 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	Referral - Ausgrid	N/A

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

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

4. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house. The Warringah Local Environmental Plan 2011 defines this land use as follows:

- **dwelling house** means a building containing only one dwelling.

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

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

5. **Prescribed Conditions**

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.

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

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

Reason: Legislative requirement.

6. General Requirements

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

Demolition and excavation works are restricted to:

 - o 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

7. **No approval for secondary dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

FEES / CHARGES / CONTRIBUTIONS

8. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$17,759.15 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,775,915.00.

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

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

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

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

9. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

10. **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 Barrenjoey Consulting Engineers, drawing number SW100DA-B, dated 05/04/2024. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. DRAINS model for the proposed stormwater management for Lot 1 shall be designed in accordance with Northern Beaches Council's Water Management for Development Policy.

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

11. **Erosion and Sediment Control Plan**

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

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

12. **Detailed Design of Stormwater Treatment Measures**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the Barrenjoey Consulting Stormwater plan 230603 revision DA-B dates 05.04.2024 and Council's Water Management for Development Policy.

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

Reason: Protection of the receiving environment.

13. **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.

14. **Compliance with Standards**

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

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

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

15. **External Finishes to Roof**

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

16. **Privacy Screen**

A privacy screen that is at least 1.65 metres in height (measured from the finished floor level) is to be erected for the entire length of the outermost south-western elevation of the balcony adjoining the first floor master bedroom. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

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

17. **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

18. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below within 10 metres of the excavation perimeter, both internally and externally, including walls, ceilings, roof, structural members and other similar items. The reports must be prepared for the following properties:

- o 9 Parr Avenue, North Curl Curl.
- o 38 Bellevue Parade, North Curl Curl.
- o 40 Bellevue Parade, North Curl Curl.

The dilapidation reports are to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

DURING BUILDING WORK

19. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for the street tree fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

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

Reason: Street tree protection.

20. Tree and Vegetation Protection

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

- i) all prescribed trees within the site,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

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

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

21. **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.

22. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

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

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

Reason: Protection of the receiving environment.

23. **Substitution of Stormwater Treatment Measures**

The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must be submitted to the Principal Certifier for approval prior to installation.

Bioretention system and wetland must use the same filtration process based and media filter and vegetation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

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

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

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

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

25. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 2 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

26. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor 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.

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.

29. **Cut and Fill**

While building work is being carried out, the principal certifier must be satisfied that all soil removed from or imported to the site is managed in accordance with the following requirements:

a) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to the Certifier.

b) All fill material imported to the site must be Virgin Excavated Natural Material as defined in Schedule 1 of the Protection of the Environment Operations Act 1997 or a material identified as being subject to a resource recovery exemption by the NSW EPA.

Reason: To ensure soil removed from the site is appropriately disposed of and soil imported to the site is safe for future occupants.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

30. Landscape Completion

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

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan, unless otherwise imposed by conditions,
- c) all tree planting shall be a minimum pre-ordered planting size of 45-75 litres or as otherwise scheduled if greater in size; meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- d) mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- f) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

Prior to the issue of an Occupation Certificate, details (from a 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. Stormwater Treatment Measures Operation and Maintenance Plan

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must contain the following:

1. Detail on the stormwater treatment measures:
 - Intent of the stormwater treatment measures including modelled pollutant removal rates
 - Site detail showing catchment for each device
 - Vegetation species list associated with each type of vegetated stormwater treatment measure
 - Impervious area restrictions to maintain the water balance for the site
 - Funding arrangements for the maintenance of all stormwater treatment measures
 - Identification of maintenance and management responsibilities
 - Maintenance and emergency contact information
2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:
 - Activity description, and duration and frequency of visits
 - Additionally for vegetated devices:
 - Monitoring and assessment to achieve an 80 percent survival rate for plantings
 - Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the treatment measure
3. Maintenance schedule and procedure - ongoing
 - Activity description, and duration and frequency of visits
 - Routine maintenance requirements
 - Work Health and Safety requirements
 - Waste management and disposal
 - Traffic control (if required)
 - Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures

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

Reason: Protection of the receiving environment.

32. Post-Construction Dilapidation Report

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- o Compare the post-construction report with the pre-construction report,
- o Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- o Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

Reason: To maintain proper records in relation to the proposed development.

33. Geotechnical Certification Prior to Occupation Certificate

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 2 of this consent.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

34. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

35. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

36. House / Building Number

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

37. 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.

38. Swimming Pool Requirements

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

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

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

39. Landscape Maintenance

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

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

Reason: To maintain local environmental amenity.

40. Geotechnical Recommendations

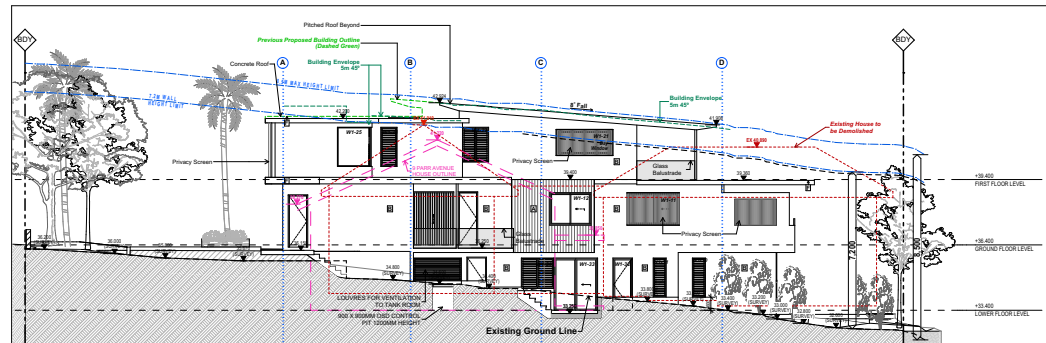
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 2 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

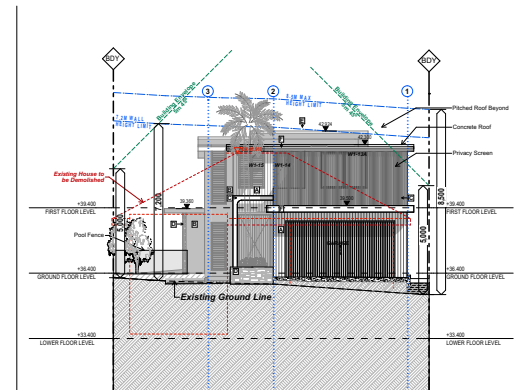
41. Swimming Pool/Spa Motor Noise

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

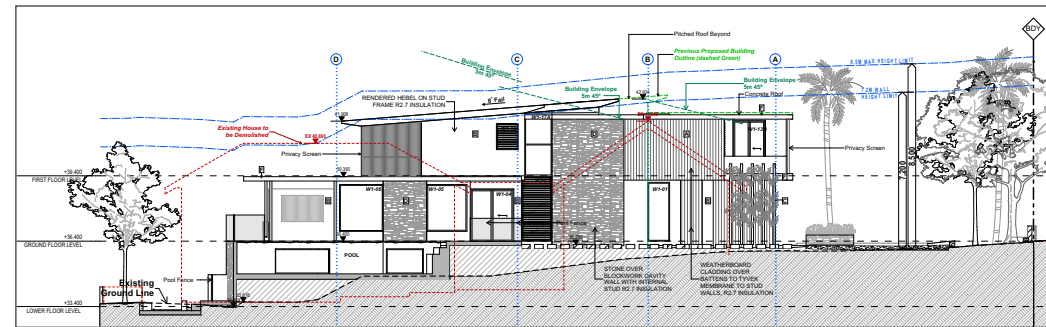
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.



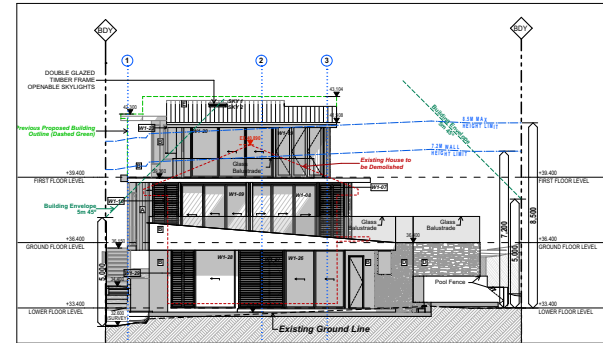
H1 WEST ELEVATION
SCALE: 1:100



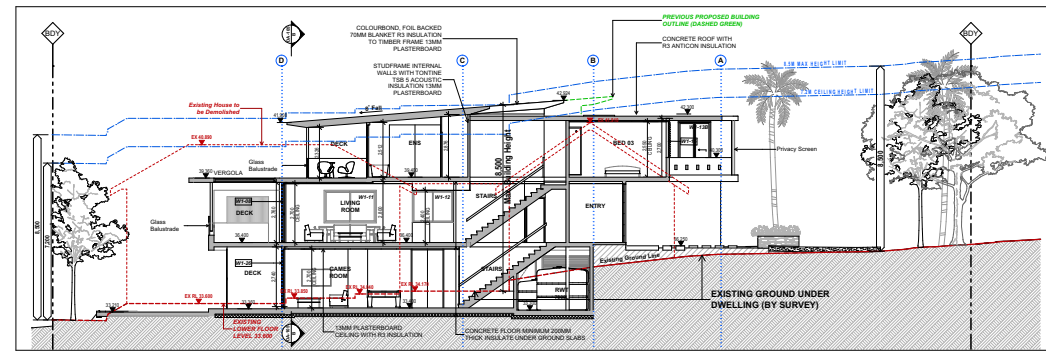
H1 NORTH ELEVATION
SCALE: 1:100



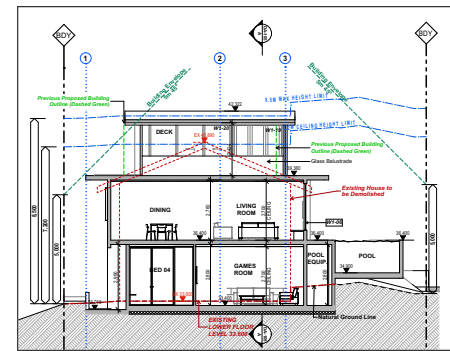
H1 EAST ELEVATION
SCALE: 1:100



H1 SOUTH ELEVATION
SCALE: 1:100



HOUSE 1 SECTION A
SCALE: 1:100



HOUSE 1 SECTION B
SCALE: 1:100

EXTERIOR FINISHES LEGEND

TIMBER CLADDING: BURNT FINISH
 RENDER + PAINT FINISH RESINE "GRAVEL"
 RENDER + PAINT FINISH RESINE "DOUBLE GRAVEL"
 SANDSTONE CLADDING
 METAL ROOFING
 RENDER + PAINT FINISH RESINE "HALF ATHENS GREY"

A - TIMBER, CHARRED	B - RENDER + PAINT FINISH
C - RENDER + PAINT FINISH	D - SANDSTONE CLADDING
E - METAL ROOFING	F - RENDER + PAINT FINISH



Item No.	Rev.	Description	Date	By	Check
1257723	A	DA SUBMISSION	20/07/23	AD	AD
2257142	B	REVISED DA SUBMISSION	20/07/23	AD	AD
2252224	C	HEIGHT POLE	20/07/23	AD	AD
2252224	D	PROPOSED DA SUBMISSION	20/07/23	AD	AD

ROB		ELEVATIONS & SECTIONS	
9400000000	HOUSE 1	1:100 (A1)	20/07/2024
7 PARK AVENUE, NORTH CURL CURVE		1:100 (A1)	20/07/2024
LOTS 91 & 91/1		1:100 (A1)	20/07/2024
FOR REBECCA ROBBS		2228	DA-105

ITEM 3.2 REV2024/0028 - 7 PARR AVENUE, NORTH CURL CURL - REVIEW OF DETERMINATION OF APPLICATION DA2023/0959 FOR DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL AND GARAGE

PURPOSE

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

RECOMMENDATION

That Council as the consent authority grants **deferred commencement approval** to REV2024/0028 for Review of Determination of Application DA2023/0959 for demolition works and construction of a dwelling house including swimming pool and garage on land at Lot 91 DP 14113, 7 Parr Avenue, North Curl, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2025/193065
Attachments	↓1 Assessment Report ↓2 Site Plan & Elevations



REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2024/0028
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 91 DP 14113, 7 Parr Avenue NORTH CURL CURL NSW 2099
Proposed Development:	Review of Determination of Application DA2023/0959 for Demolition works and construction of a dwelling house including swimming pool and garage
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:	Yes
Applicant:	Sean Clive Gartner

Application Lodged:	04/11/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	13/11/2024 to 27/11/2024
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	\$ 1,744,268.00
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EXECUTIVE SUMMARY

This Review of Determination application has been made pursuant to Section 8.3 of the Environmental Planning and Assessment Act 1979 regarding the refusal of Development Application DA2023/0959, which sought consent for demolition works and the construction of a part two/part three storey dwelling house, including a swimming pool, on a future allotment (Lot 2) that was approved under Development Application No. DA2023/0957 (i.e. a separate development application to the dwelling house) but not formally registered at the time of this assessment.

This review application is referred to the Development Determination Panel (DDP) as the



determination of DA2023/0959 was made by the DDP and therefore, the review application is required to be referred to an alternate DDP for determination.

There are currently Class 1 proceedings being undertaken within the NSW Land and Environment Court against the refusal of DA2023/0959. The applicant commenced these proceedings on 5 November 2024 to save the statutory time frame for the assessment and determination of the subject review application.

The reasons for refusal of DA2023/0959 relate to view loss, building bulk and scale and insufficient information in relation to stormwater management and vehicular access. These reasons for refusal have been assessed in detail under this review application together with the additional documentation and supporting information submitted with this application.

The development proposed under this review application has made substantive amendments to the first floor of the dwelling house, which include increasing the rear setback by 3m and increasing the north-eastern side setback at the rear of the first floor by 3.7m. These amendments have reduced the bulk and scale of the dwelling house and enabled the retention of views towards North Head from the rumpus room and swimming pool area on the ground floor at 5 Parr Avenue, while the views of North Head from the first floor of 5 Parr Avenue remain unaffected. This outcome constitutes a reasonable view sharing outcome in accordance with the view sharing planning principles established by the NSW Land and Environment Court in the matter of *Tenacity Consulting v Warringah* [2004] NSWLEC 140, noting that the affected view corridor is located over a side boundary and is caused by a development that complies with all applicable development standards and built form controls under the WLEP 2011 and WDCP 2011.

Updated DRAINS modelling has demonstrated that the on-site detention storage is adequate, while the removal of the 'parking' references from the driveway hardstand will ensure that vehicular access to the site is not hindered, which has resolved the insufficient information reasons for refusal.

The public exhibition of the application resulted in 4 individual submissions by way of objection. The concerns raised within the submissions relate to; building bulk and scale, view loss, solar reflection, visual privacy, insufficient detailing on the plans in relation to measurement annotations, impacts on available on-street car parking and impacts on the structural integrity of adjoining buildings. The concerns raised within the submissions have been assessed throughout the report and are not considered issues that would warrant refusal of the application. Conditions have been recommended where appropriate to address these concerns, particularly in relation to mitigating solar reflections and to ensure that dilapidation surveys are carried out prior to and post development to safeguard any potential damage to adjoining buildings as a result of earthworks.

The assessment has concluded that the review application has provided a satisfactory response to resolve the reasons for refusal of DA2023/0959. The development is also consistent with all applicable environmental planning instruments and regulatory provisions and therefore, is considered to be in the public interest.

Accordingly, it is recommended that the DDP alter the original decision and approve the application, subject to the conditions attached to this report, which include a deferred commencement condition that precludes the consent from being activated until a Subdivision Certificate is issued for Lot 2.

PROPOSED DEVELOPMENT IN DETAIL

The applicant sought approval for demolition works and the construction of a part two/part three storey dwelling house, including a swimming pool, located upon a future allotment that has been approved pursuant to Development Consent No. DA2023/0957, but not formally registered with the NSW Land



Registrar. This allotment is future Lot 2.

The DA was refused by the DDP on 6 May 2024 for the following reasons:

1. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted in support of the application.

Particulars:

i) The proposed development is inconsistent with Clause C4 Stormwater of the Warringah Development Control Plan 2011 as the submitted DRAINS Model prepared for the application consists of errors. The conclusions drawn in the Model cannot be relied upon.

ii) The HED control pit for the OSD system shall not be located within the planting area. The design in this regard is inconsistent with the architectural plans.

iii) The proposed development is inconsistent with C2 Traffic, Access and Safety as the external parking spaces included in the design will result in an impediment to internal vehicular access.

2. Pursuant to Section 4.15(1)(a)(i) & (iii) and 4.15(1)(b) & (c) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 1.2 Aims of the Plan of the Warringah Local Environmental Plan 2011 and the following controls within the Warringah Development Control Plan: A.5 Objectives, D7 Views, and D9 Building Bulk.

Particulars:

i) The proposed design fails to achieve the requirements of Clause D9 Building Bulk resulting in a dwelling with a large building footprint, which in conjunction with unacceptable building mass is representative of a built form which has not been designed to complement and integrate with the site's topography nor the site constraints.

ii) The proposal is not considered to be compatible with the height and scale of surrounding and nearby development, nor complement the building line and pattern that is present in the vicinity, despite strict compliance with the maximum building height prescribed under Clause 4.3 of the Warringah Local Environmental Plan 2011. The consequence of this is that the resultant building is incompatible with the prevailing built form. The development results in amenity impacts to surrounding properties.

iii) The proposed development by way of its significant building mass gives rise to an unacceptable impact on views obtained by adjacent properties. It is considered that the impact to these views is not representative of view sharing and that the outcome is contrary to and fails the set within Planning Principle Tenacity v Warringah Council.

iv) A more 'skilful design' which provides the residents of the subject site with a similar development potential and amenity is considered to be achievable through a rationalisation of the building footprint, partial removal and/or modulation of the upper floor storey, as well as a greater and more recessive rear setback, that has regard to, and consideration of the location of such elements on site in relation to view corridors that may be impacted.

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.

Particulars:

i) The resultant built form in conjunction with the unreasonable amenity impacts upon adjoining and nearby properties, is such that approval of the proposed development would not be within the public's



interest.

Proposed Development under this Review of Determination (REV2024/0028)

The applicant seeks a review of DA2023/0959 for demolition works and the construction of a part two/part three storey dwelling house including a swimming pool and landscaping.

The development proposed under this subject review application has incorporated the following amendments to the approved development:

- Alterations to the first-floor floor plate to reduce the size of the first floor, in particular increasing the rear setback by 3m, increasing the south-western side setback by up to 2m, removing floor space within the north-eastern corner of the first floor by increasing the north-eastern side setback by 3.7m and adding small areas of floor space on the south-western side of the building at the front of the building.
- Minor amendments to the ground and lower ground floor plate to re-distribute floor space.
- Remove references on the architectural site plans pertaining to 'external car parking spaces' on the driveway.

The development on Lot 2 is depicted below in **Figure 1**. **Figure 1** also shows the proposed development on Lot 1, which is subject to a separate review of determination application.

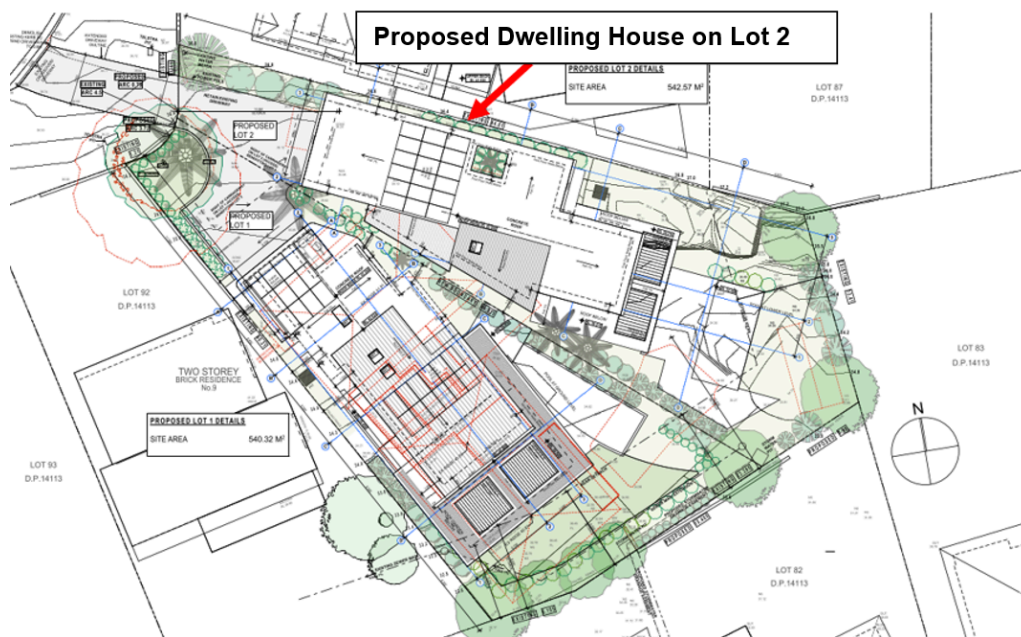


Figure 1 - Proposed dwelling house on Lot 2 (dwelling house on Lot 1 to the south-west also shown)

In conjunction with the review application, there are currently Class 1 proceedings being undertaken within the NSW Land and Environment Court for the refusal of Development Application No. DA2023/0959. The applicant commenced these proceedings on 5 November 2024 to save the statutory time frame for the assessment and determination of the subject review 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

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
 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 - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk

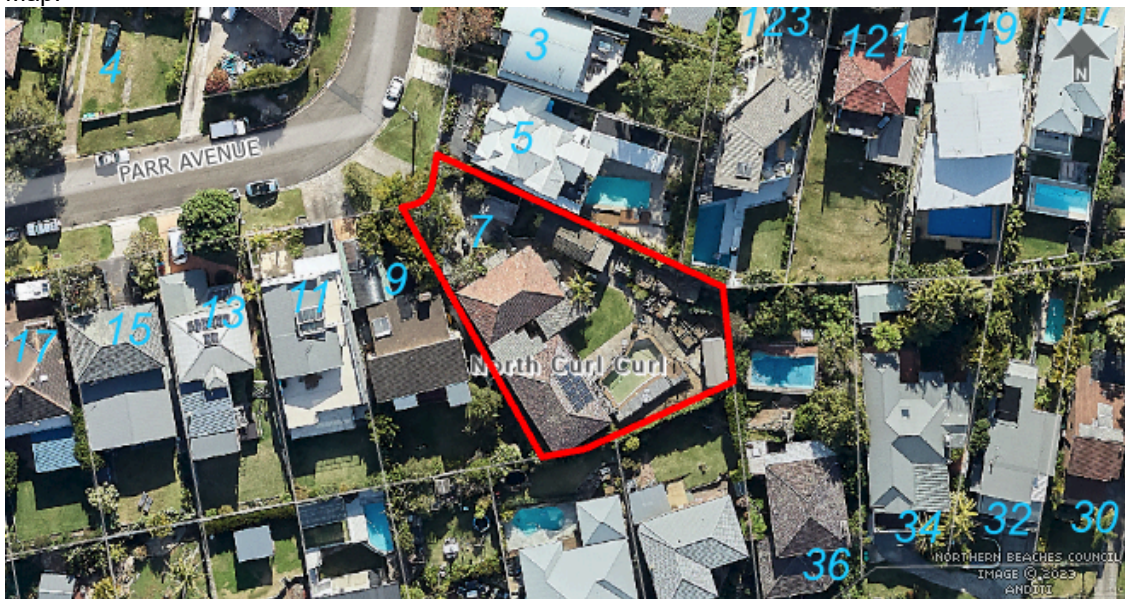
SITE DESCRIPTION

Property Description:	Lot 91 DP 14113 , 7 Parr Avenue NORTH CURL CURL NSW 2099
Detailed Site Description:	The subject site consists of one allotment located on the south-eastern side of Parr Avenue. The subject site is legally identified as Lot 91 in Deposited Plan 14113 and is commonly known as 7 Parr Avenue, North Curl Curl. The site is irregular in shape with a curved frontage of 9.79 metres (m) and respective depths of 40.31m and 44.61m along the south-western and north-eastern side boundaries. The site has a surveyed area of 1,082.51 square metres (sqm). The future Lot 2 where the proposed development is located has an area of 542.57sqm.



	The site is located within the R2 Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011 (WLEP) and accommodates a part one / two storey dwelling house including an outbuilding, a carport and a swimming pool. The site experiences a fall of approximately 5m that slopes away from the north-eastern side boundary towards the southern rear corner. Landscaping on the site comprises of lawn areas, shrubbery and a several small trees adjacent to the front boundary. The site also contains numerous rock outcrops along the north-eastern side boundary. The site is not burdened by any significant environmental constraints or restrictive covenants. The surrounding built environment is characterised by detached low density residential development (i.e. dwelling houses).
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Map:



SITE HISTORY

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

Development Application No. DA2023/0957 (parent subdivision approval)

On 31 May 2025, the DDP approved Development Application DA2023/0957, with a deferred



commencement condition for an inter-allotment drainage easement for demolition works and the alterations and additions to the existing dwelling house, including the subdivision of one lot into two. The approved subdivision layout is depicted in **Figure 2** below.

It is noted that the deferred commencement condition has now been satisfied and the consent is operable.

Importantly, it is noted that DA2023/0957 was approved without any restrictive covenants to limit future development to a prescribed building envelope to ensure future dwelling house applications protected existing view corridors.

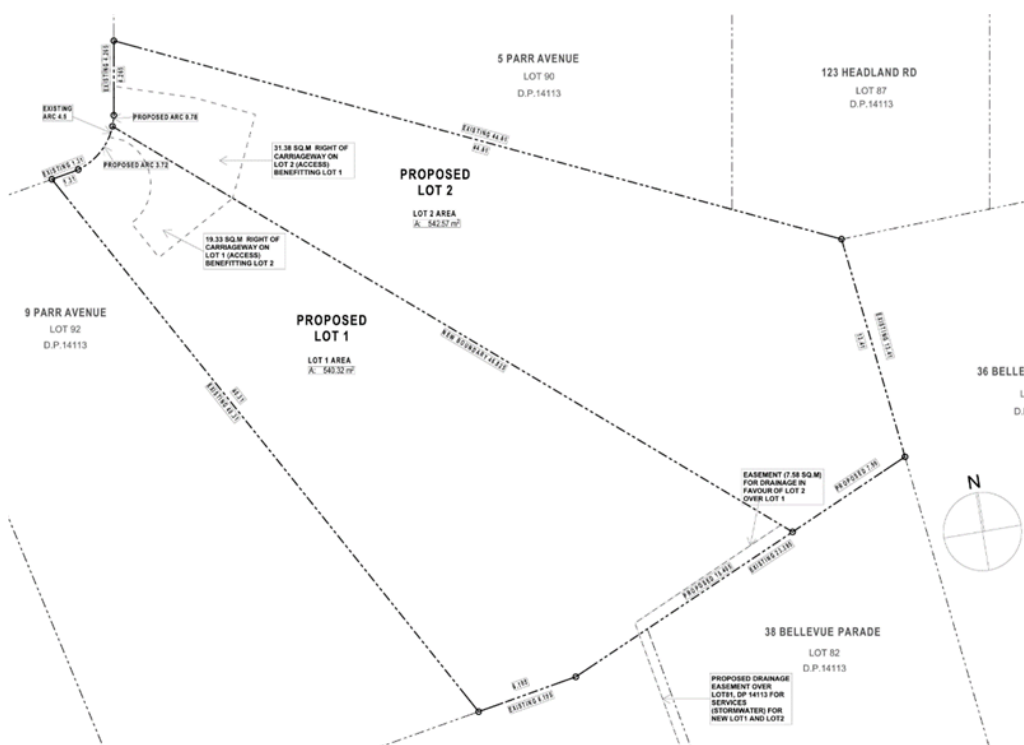


Figure 2 - Approved subdivision layout

The subject review of determination application involves the construction of a new dwelling house on Lot 2, being the future allotment located on the northern side of the subject site.

Development Application No. DA2023/0959 (subject of current review)

On 5 May 2024, the DDP refused Development Application DA2023/0959 for demolition works and construction of a dwelling house including swimming pool and garage on Lot 2. The reasons for refusal have been outlined earlier within this report.

The refusal of Development Application DA2023/0959 is currently subject to Class 1 proceedings in the NSW Land and Environment Court.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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



are:

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application or modification 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.

As DA2023/0959 was determined on 6 May 2024, the review would typically be required to be lodged and determined before 6 November 2024, being six months from the date of determination and the relevant period in which any appeal against the refusal may be made to the NSW Land and Environment Court. However, this time has now been extended and will not expire as a Class 1 Application against the refusal of DA2023/0959 has been made with the NSW Land and Environment Court. Therefore, the statutory time frame to assess and determine this review application will not elapse until the Class 1 proceedings have concluded. The Class 1 proceedings have a Section 34AA conciliation conference scheduled for April.

Section 8.3 (3) provides that Council may review a determination if, in the event that 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 'Detailed Description of Works' section of this report. A comparison of the original plans under DA2023/0959 and the plans submitted under this review application 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 scheme is substantially the same as the original proposal and the proposal satisfies the requirement of Section 8.3 (3) of the EP&A Act.

Assessment of Reasons for Refusal under DA2023/0959

The applicant has made amendments to the proposed development and requested that the reasons for refusal imposed under DA2023/0959 be reviewed under this application. These reasons for refusal that are stipulated in the Notice of Determination for DA2023/0959 are examined below to determine if they remain applicable or should be overturned.

1. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted in support of the application.

Particulars:

i) The proposed development is inconsistent with Clause C4 Stormwater of the Warringah Development Control Plan 2011 as the submitted DRAINS Model prepared for the application consists of errors. The conclusions drawn in the Model cannot be relied upon.

ii) The HED control pit for the OSD system shall not be located within the planting area. The design in this regard is inconsistent with the architectural plans.

iii) The proposed development is inconsistent with C2 Traffic, Access and Safety as the external parking spaces included in the design will result in an impediment to internal vehicular access.

Comment:



The review application has appropriately addressed the particulars in the reason for refusal for the following reasons:

- The stormwater management plans submitted with this application have included an updated DRAINS Model to correct the previous errors. Moreover, the stormwater management plans, which seek to convey stormwater from the development downslope via an inter-allotment drainage easement through 40 Bellevue Parade in accordance with the requirements of Development Application DA2023/0957 (which approved the subdivision on the site), have been endorsed by Council's Development Engineers as a compliant stormwater management scheme that meets Section C4 of the Warringah Development Control Plan 2011 (WDCP) and Council's Water Management for Development Policy.
- The external car parking spaces on the driveway have been removed to ensure un-impeded access is maintained to the dwelling house on Lot 2.

For these reasons, this reason for refusal should no longer apply.

2. Pursuant to Section 4.15(1)(a)(i) &(iii) and 4.15(1)(b) & (c) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 1.2 Aims of the Plan of the Warringah Local Environmental Plan 2011 and the following controls within the Warringah Development Control Plan: A.5 Objectives, D7 Views, and D9 Building Bulk.

Particulars:

i) *The proposed design fails to achieve the requirements of Clause D9 Building Bulk resulting in a dwelling with a large building footprint, which in conjunction with unacceptable building mass is representative of a built form which has not been designed to complement and integrate with the site's topography nor the site constraints.*

ii) *The proposal is not considered to be compatible with the height and scale of surrounding and nearby development, nor complement the building line and pattern that is present in the vicinity, despite strict compliance with the maximum building height prescribed under Clause 4.3 of the Warringah Local Environmental Plan 2011. The consequence of this is that the resultant building is incompatible with the prevailing built form. The development results in amenity impacts to surrounding properties.*

iii) *The proposed development by way of its significant building mass gives rise to an unacceptable impact on views obtained by adjacent properties. It is considered that the impact to these views is not representative of view sharing and that the outcome is contrary to and fails the set within Planning Principle Tenacity v Warringah Council.*

iv) *A more 'skilful design' which provides the residents of the subject site with a similar development potential and amenity is considered to be achievable through a rationalisation of the building footprint, partial removal and/or modulation of the upper floor storey, as well as a greater and more recessive rear setback, that has regard to, and consideration of the location of such elements on site in relation to view corridors that may be impacted.*

Comment:



The review application has appropriately addressed the particulars in this reason for refusal for the following reasons:

- The development is highly articulated, includes varied wall plans and varied external finishes, steps away from the side boundaries as the building height increases and generally steps down in height with the slope of the land. Therefore, the development meets the requirements of Section D9 'Building Bulk' of the WDCP.
- The reason of refusal pertaining to incompatibility with the height and scale of surrounding development is an objective of Clause 4.3 'Height of Buildings' under the WLEP. As the development complies with Clause 4.3 of the WLEP, the development is deemed to satisfy this objective of the height standard. As such, this reason for refusal is not relevant.
- The assessment of this review application, which has included view loss inspections at neighbouring properties, has revealed that the development on Lot 2 results in moderate view loss from 5 Parr Parade when considered in accordance with the planning principles established within the NSW Land and Environment Court case of *Tenacity Consulting v Warringah [2004] NSWLEC 140*. However, the assessment finds that the amendments made to the development under this review application, which include increasing the rear setbacks of the first floor element by 3m and increasing the north-eastern side setback by 3.7m at the rear of the first floor, has reduced the extent of view loss from the ground floor areas at 5 Parr Parade. It is also noted that the views towards North Head from the first floor of 5 Parr Parade are not impacted upon. Any further amendments would unduly reduce the development potential on the site, contrary to the view sharing planning principles. The areas of the proposed dwelling house that are creating the impact also comply with all of the applicable WLEP and WDCP built form standards and controls. The affected view corridor from the ground floor areas are also highly vulnerable to impacts from redevelopment on the site as they are enjoyed over a side boundary from the front half of the adjoining property. In this regard, the assessment finds that reasonable view sharing is achieved.

For these reasons, this reason for refusal should no longer apply.

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.

Particulars:

i) The resultant built form in conjunction with the unreasonable amenity impacts upon adjoining and nearby properties, is such that approval of the proposed development would not be within the public's interest.

Comment:

The assessment finds that the development is consistent with the aims and objectives of the WDCP 2011 and applicable Environmental Planning Instruments (WLEP 2011), such that the development is of a form, scale and intensity that the community can reasonably expect to occur on the site. Therefore, the development is considered to be in the public interest.

For these reasons, this reason for refusal should no longer apply.



Conclusion

As demonstrated above, the amendments made to the proposed development in this review application have resolved the reasons for refusal imposed under Development Application DA2023/0959. Therefore, the review application is recommended for approval.

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 13/11/2024 to 27/11/2024 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 4 submission/s from:

Name:	Address:
Mr Laurence Edward Cronin Ms Christine Margaret Cronin	1 Parr Avenue NORTH CURL CURL NSW 2099
Mrs Sandra Marshall	123 Headland Road NORTH CURL CURL NSW 2099
Mrs Sharon Elizabeth Billyard Noel Frederick Billyard Daniel John Billyard	5 Parr Avenue NORTH CURL CURL NSW 2099
Mrs Elizabeth Ann Fraser Hugh David Fraser	36 Bellevue Parade NORTH CURL CURL NSW 2099

Several pieces of correspondence were received in response to the notification, amounting to a total of 4 submissions by way of objection. The following issues were raised in the submissions:

- **View Loss**

The submissions raised concerns that the development will result in adverse view loss from surrounding properties.

Comment:

This matter has been discussed in detail within the section of this report relating to Section D7 'Views' of the Warringah Development Control Plan 2011 (WDCP). In summary, the assessment concludes that the development results in reasonable view sharing in accordance with the planning principles established within the NSW Land and Environment Court case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.



- **Bulk and Scale**

The submissions raised concerns that the bulk and scale of the development is excessive and will result in unacceptable impacts to the surrounding area.

Comment:

The development is highly articulated, includes varied wall plans and varied external finishes, steps away from the side boundaries as the building height increases and generally steps down in height with the slope of the land. These factors, coupled with the fact that the development complies with all applicable built form controls and standards under the WLEP and WDCP, will result in a built form that will maintain an appropriate visual relationship with the surrounding built environment. As such, the bulk and scale of the dwelling house is considered to be acceptable in the context of the site.

- **Prior Subdivision**

The submissions raised concerns in relation to the previous subdivision that was approved on the site under DA2023/0957 and how this subdivision has resulted in future impacts on adjoining properties due to the width of the allotments at the front boundary.

Comment:

The comments in relation to approval of the subdivision consent are noted, but are not specifically relevant to the current application. It is further noted that no restrictions were imposed under the original subdivision approval in relation to the future building envelopes on Lot 2, despite indicative dwelling designs being provided, which demonstrated the likely view impacts anticipated with future development. This assessment has considered the merits of the proposal in relation to the impacts it causes on adjoining properties. The assessment finds that the impacts are acceptable and can be appropriately mitigated where appropriate through the recommended conditions of consent.

- **Visual Privacy**

The submissions have raised concerns in relation to potential privacy impacts.

Comment:

This matter is assessed in detail within the section of this report relating to Section D8 'Privacy' of WDCP. In summary, the assessment finds that the development complies with the requirements of this control.

- **Solar Reflections**

The submissions raised concerns that the development will result in adverse solar reflection / glare to adjoining properties.

Comment:

The facade treatment is not considered to generate unreasonable glare. Moreover, a condition is recommended to minimise solar reflections from the roof (i.e. the solar absorbance rating of



the roof will need to be 0.43 or greater).

- **Inadequate Annotations on Architectural Plans**

The submissions raised concerns that the architectural plans do not contain adequate annotations on the plans in relation to building depths and widths.

Comment:

The architectural plans are legible, insofar as they contain the levels of the existing ground levels, finished ground levels, finished floor levels, finished ceiling levels and ridge levels to the Australian Height Datum. The plans are also prepared correctly to scale and include the dimensions of the building setbacks. As such, the assessing office is able to correctly identify the building depths and widths.

- **Impacts on On-Street Car Parking**

The submissions raised concerns that the development would impact upon available on-street car parking.

Comment:

Each dwelling contains a double garage to park two vehicles, which complies with the WDCP car parking requirements. As such, it is considered that the development would not unreasonably constrain available on-street car parking.

- **Impacts on Structural Integrity of adjoining Buildings**

The submissions raised concerns that the development may impact upon the structural integrity of adjoining buildings and a request for dilapidation surveys to be carried out was requested in a submission.

Comment:

Given a moderate amount of earthworks is proposed on Lot 2, a condition is recommended requiring dilapidation surveys to be carried out prior to and post construction at the three adjacent sites to Lot 2 (5 Parr Avenue, 36 Bellevue Avenue and 38 Bellevue Avenue).

The concerns raised above have been appropriately addressed and resolved through recommended conditions where appropriate. The concerns do not warrant refusal of the application or a further redesign.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	SUPPORTED WITH CONDITIONS The Lot 2 Landscape Referral review of the development application is undertaken by an alternate officer. The application seeks consent for demolition works and construction of a dwelling house including swimming pool and garage within Lot 2 as identified in the Site Plans.



Internal Referral Body	Comments
	Lot 2 does not support any prescribed trees. The existing street tree fronting the property shall be retained and protected. A Landscape Plan is submitted for consideration. The Landscape Plan provided indicates landscape design elements to the 'landscaped area' to satisfy Warringah control D1, with planting design layout and quantities. The proposed Cabbage Tree Palm at the front of the property shall be replaced with a small native tree as the landscape outcome of the Cabbage Tree Palm will not be evident for decades as opposed to a small native tree which will provide built form softening when established. The proposed Cabbage Tree Palm may be planted elsewhere or remain complimentary to the small locally native tree. Existing sandstone outcrops/boulders are found at the rear of Lot 2 and these are proposed for retention and thus Warringah DCP control E6 retaining unique environmental features, is satisfied. The landscape setting outcomes are able to be supported by Landscape Referral, subject to conditions of consent
NECC (Development Engineering)	SUPPORTED WITH CONDITIONS 5/12/2024 Stormwater The OSD HED control pit has been relocated as requested. <u>Council's Development Engineer requests additional information as detailed below.</u> A copy of revised DRAINS model hasn't been submitted to Council for assessment as per Development Engineering comments for DA2023/0959. 07/01/2025 Planner is requested to provide a condition of consent to require proof of creation of Lot 2 with NSW Land Registry Services since this application is reliant upon, prior to the issue of any Construction Certificate. The stormwater management has been reviewed. No development Engineering objections subject to the conditions of approval. It is to be noted that the subdivision conditions of consent DA2023/0957 are to be complied, prior to the activation of DA2023/0858 (construction of dwellings on Lo1 and Lot 2). This is required, in order that all public utility services, inter-allotment drainage and access are provided for the proposed lots.



Internal Referral Body	Comments
NECC (Water Management)	SUPPORTED WITH CONDITIONS This application was assessed in consideration of: • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WMD Policy); and • Relevant LEP and DCP clauses The proposal is for demolition and construction of a residential development intended for Lot 2. Section 4.0 of the WMD Policy applies. Water sensitive urban design, water reuse and infiltration into the soil, and the resulting quality of stormwater leaving the site are interconnected concepts that guide a merit-based assessment under the section. The proposed stormwater plan includes features to retain water and encourage infiltration. Note, water from the proposed pool must not enter the stormwater system. No objections regarding water management

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

The proposed development takes place on a newly subdivided allotment that was approved prior to the coming into force of this policy. Hence, this policy is not applicable for this assessment.



SEPP (Sustainable Buildings) 2022

The BASIX Certificate lodged with the original development application was submitted. The applicant has provided written correspondence arguing that the BASIX legislation allows amendments to a design during assessment or construction if *"the amendment results in the proposed development not differing materially from the description contained in the existing BASIX certificate"*. As such, the applicant's contends that a revised BASIX Certificate is not required.

The assessing officer concurs with the justification provided by the applicant and considers the original BASIX Certificate to be adequate for the following reasons:

- The dwellings are materially the same in terms of layout, numbers of bedrooms, living rooms, etc.
- Orientation of the dwellings remains the same.
- All window areas, and orientations remain the same.
- No changes to any Water use specifications to the BASIX Certificate.
- No changes to any Energy use specifications in the BASIX Certificate.
- No changes to any materials, windows or components in the Thermal Comfort areas of the BASIX Certificate.

The BASIX Certificate is also valid as it was lodged within 3 months of submitting the development application that this subject review application is considered against.

A condition is recommended to ensure compliance with the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Chapter 2 - Infrastructure

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

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

Comment:

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



SEPP (Biodiversity and Conservation) 2021

Chapter 2 - Vegetation in non-rural areas

Chapter Two of State Environmental Planning Policy (Biodiversity and Conservation) (BC SEPP) applies to the development pursuant to clause 2.3 and aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 2.3 has been considered and the development does not propose the removal of any prescribed vegetation in order to facilitate the development and therefore, no further consideration of Chapter Two is required.

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.

The assessment of Development Application DA2023/0957, which approved Lot 2 where the dwelling house is proposed, concluded that the site was suitable for residential land use due to the historical use of the site for residential purposes. In this regard, the assessment finds that the site is suitable for the residential land use and that the site poses no contamination risk.

The development satisfies the relevant considerations under Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021.

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 (max)	7.668m	-	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

The development involves the construction of a dwelling house, which is a permissible land use with development consent in the R2 Low Density Residential zone.

The assessment finds that the development is consistent with the objectives of the R2 zone, insofar as the development will provide for the housing needs of the community within a low density residential environment and the development will provide a landscaped setting that is commensurate with the established landscaped setting of the local, given the scheme provides deep soil landscaping and vegetation planting around the curtilage of the building.

6.2 Earthworks

The development involves excavation and filling to facilitate the proposed dwelling house. In this regard, Clause 6.2 of the WLEP is applicable to the assessment.

The objectives of Clause 6.2 read as follows:

- (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 earthworks are not of a great significance that would disrupt existing drainage patterns and soil stability in the locality. The Geotechnical Site Investigation (GSI) (prepared by Crozier Geotechnical Consultants, dated 20 January 2023) and subsequent addendum report (dated 24 October 2024) have concluded that the proposed development will result in acceptable risk with respect to geotechnical risk and soil stability. Several recommendations for construction have been outlined within the GSI to mitigate any risk. These recommendations have been adopted as recommended conditions of consent.

- (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:

Suitable conditions are recommended to ensure that the quality of fill imported on site is of suitable quality and to ensure that the excavated soil is classified in accordance with the EPA's Waste Classification Guidelines before being disposed of at an approved waste management facility

(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, while further conditions are recommended to mitigate construction noise, dust and erosion impacts.

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

The 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 within the vicinity of watercourses, drinking water catchments or environmentally sensitive areas.

Having regard to the above assessment, it is concluded that the development meets the jurisdictional requirements of Clause 6.2 of the WLEP.

6.4 Development on sloping land



The site is located within Area B on the WLEP Landslip Risk Map. Therefore, Clause 6.4 of the WLEP is applicable the assessment.

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

Comment:

As previously detailed in this report, the GSI and subsequently addendum report have concluded that the proposed development will result in acceptable risk with respect to geotechnical risk and soil stability. Several recommendations for construction have been outlined within the GSI to mitigate any risk. These recommendations have been adopted as recommended conditions of consent.

In this regard, the assessment finds that the risk associated with respect to landslides in relation to property and life are acceptable and will be appropriately mitigated by the recommended conditions of consent.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site

Comment:

As previously outlined within this report, Council's Development Engineers are satisfied that the stormwater management scheme accords with Council's Water Management for Development Policy. Therefore, it is considered that the development will not cause significant detrimental impacts due to stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment:

The GSI submitted with this application concluded that geotechnical testing did not result in interactions with ground water. As such, the development will not affect existing subsurface flow conditions.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the jurisdictional requirements under Clause 6.4 of the WLEP.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.1m	-	Yes
B3 Side Boundary Envelope	5m / 45 degrees (north-east)	Within Envelope	-	Yes
	5m / 45 degrees (south-west)	Within Envelope	-	Yes



B5 Side Boundary Setbacks	0.9m (north-east)	1m - 6m	-	Yes
	0.9m (south-west)	1m - 4.5m	-	Yes
B7 Front Boundary Setbacks	6.5m	10m	-	Yes
B9 Rear Boundary Setbacks	6m	9.77m (dwelling) 4.1m (pool)	31.67% (pool)	Yes - exemption applies for pools - see discussion
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	43.37% (235.29sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
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
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B9 Rear Boundary Setbacks

The proposed swimming pool area is setback 4.1m from the rear boundary. While Section B9 of the WDCP typically requires development to be setback at least 6m from rear boundaries, the control includes an exemption that is applicable for swimming pools, which reads as follows:

"On land zoned R2 Low Density Residential, and land zoned RU4 Rural Small Holdings that has frontage to "The Greenway", Duffy's Forest, 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".

The proposed swimming pool area occupies 11.07% (13.5%) of rear setback area and is located within the R2 zone. Therefore, this exemption is applicable. An assessment against the objectives of Section B9 of the WDCP demonstrates that the development is consistent with the objectives of this control. Therefore, the exemption provision is applicable. The assessment against the objectives of the control is provided below.

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

Comment:

The development complies with Section D1 'Landscaped Open Space' of the WDCP. In this regard, it is considered that adequate deep soil landscaping is provided on the site.

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

Comment:

The encroaching elements relate to open structures (i.e. swimming pool and pool paving) that are located in close proximity to ground level. The encroaching elements also occupy a small portion of the 6m rear setback area, as depicted in **Figure 3**, with all remaining areas being landscaped. In this regard, it is considered that a reasonable sense of openness is maintained within the rear yard.

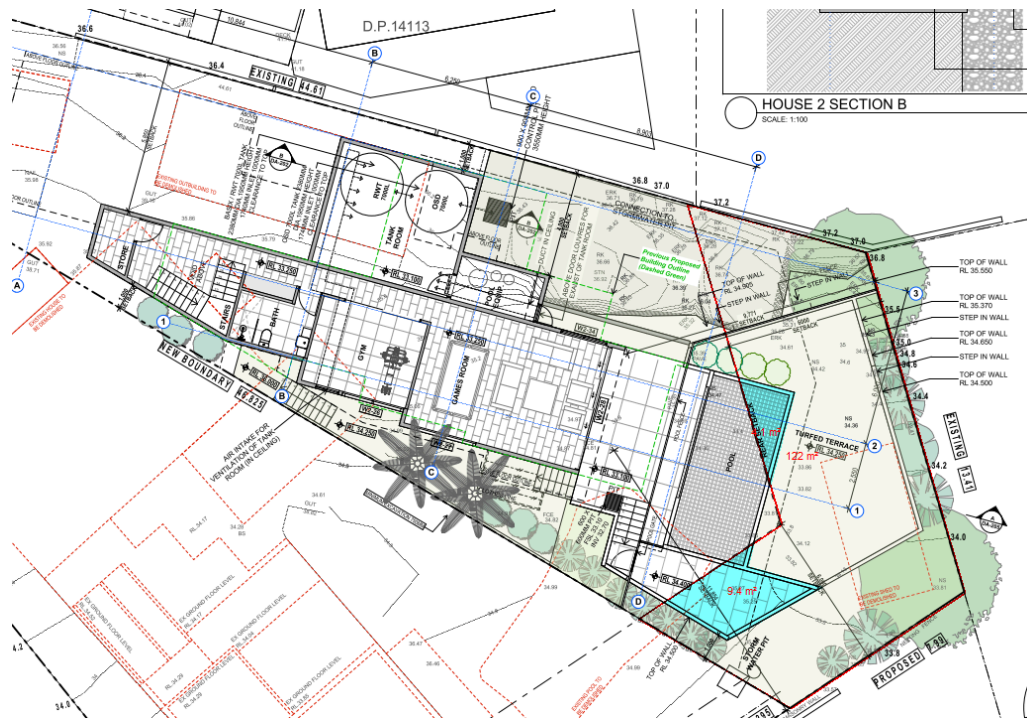


Figure 3 - Rear setback encroachments highlighted in blue

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

Comment:

The encroaching elements do not pose any unreasonable privacy impacts to the proposed development on Lot 1 or downslope properties, given the encroachments are sited near the existing ground level and ample separation with landscape planting is provided as a buffer between the development on Lot 2 and the adjoining properties. Moreover, as the encroachments relate to open structures sited near existing ground level, the encroachments will not result in adverse amenity impacts in relation to view sharing, visual outlook or solar access.

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

Comment:

There are several examples of swimming pools that encroach into the rear setback areas on adjoining properties and this level of encroachment (i.e. under 50% of the rear setback area) is anticipated by the exemption provision under Section B9 of the WDCP. In this regard, the development will maintain the existing visual continuity of development and landscaped elements within the locality.

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

Comment:



As outlined above, the encroachments do not result in adverse privacy impacts for neighbouring properties.

As demonstrated above, the development meets the objectives of this control and the exemption requirements.

As such, the development is deemed to comply with the prescriptive requirements of this control.

D7 Views

The assessing officer has undertaken view loss inspections at 1 Parr Avenue and 5 Parr Avenue, which are located to the north of the subject site (see **Figure 4**).

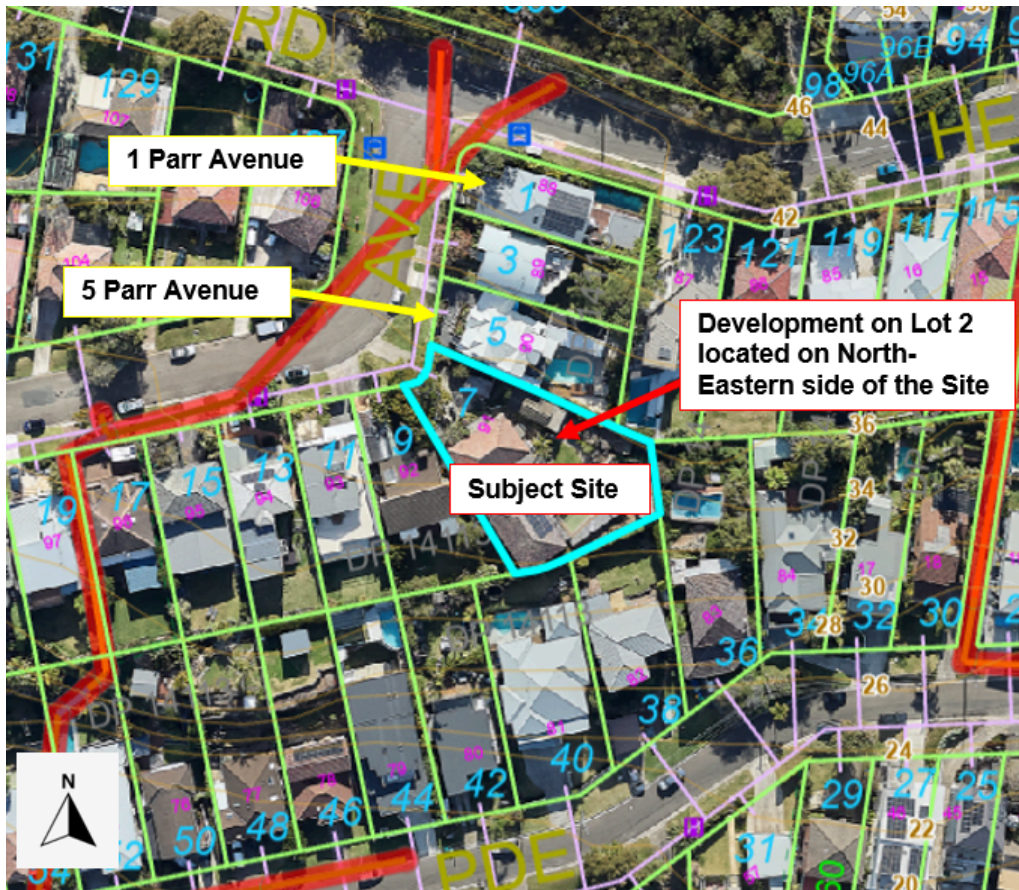


Figure 4 - Location of affected properties in relation to the subject site

It is noted that the owners of 3 Parr Avenue objected to the original development application on view loss grounds. However, they have not objected to the subject review application. The assessing officer has contacted the owners of 3 Parr Avenue to arrange a site inspection. However, no response has been received. The assessing officer has also attempted to arrange a site visit at 123 Headland Road but to no avail.



To ascertain the extent of view loss from 1 and 5 Parr Avenue, a site inspection was carried out from the affected properties. No height poles or certified wire diagrams were requested to assist in the view loss assessment from 1 Parr Avenue, as the height poles for the original development application and the Assessment Report for the original development application found that there was 'minimal' view loss from this property. The proposed development that is subject to this review application is of a reduced size and footprint than the prior development proposed under the development application. As there is no need for additional height poles or certified montages.

However, certified wire diagrams/montages in accordance with the NSW Land and Environment Court practice note for montages were prepared to assist with the view loss assessment from 5 Parr Avenue. These montages were prepared based off various photos taken by the assessing officer from a height of 1.6m above the finished floor level (i.e. average eye level).

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:

1 Parr Avenue

The view corridor is located to the south/south-east from this property and comprises of an obstructed view corridor towards the Queenscliff escarpment and Manly and North Head. The obstructions comprise of existing vegetation and existing development located to the south/south-east of 1 Parr Avenue. The views are considered to hold moderate value in accordance with this planning principle, given they are significantly obstructed. The views in question are depicted in **Figures 5-6** below.



Figure 5 - Existing view corridor from the ground floor entertaining deck (standing position)



Figure 6 - Existing view corridor from first floor balcony adjoining bedrooms (standing position)



5 Parr Avenue

The assessing officer has undertaken photos from seven different vantage points, being:

- Vantage Point 1: ground floor rear deck;
- Vantage Point 2: swimming pool area;
- Vantage Point 3: ground floor living room;
- Vantage Point 4: ground floor kitchen island bench;
- Vantage Point 5: ground floor rumpus room (i.e. second living space);
- Vantage Point 6: first floor rear balcony adjoining a bedroom; and
- Vantage Point 7: first floor bedroom.

The photos from these vantage points and the surveyed levels from these vantage points have been used to generate view impact montages in accordance with the Court's montage requirements. All photos are from a standing position (1.6m above the finished floor level). This was undertaken with a measuring tape. The various vantage points within 5 Parr Avenue are shown on **Figure 7**.

However, a review of the view impact diagram for Viewpoint 7 has revealed that the montages for this viewpoint appear to be incorrect as they show the building to be lower than the balustrade level of the first floor of 5 Parr Avenue, while Viewpoint 6 contains the building higher than the balustrade level - which is correct. This is due to Viewpoint 6 and 7 taken from RL43.39m AHD, being 1.14m higher than the proposed roofline of the dwelling house on Lot 2. As such, the montage for this viewpoint has not been shown in this assessment report as it does not correctly depict the extent of view loss. Nonetheless, the other prior montages are accurate and enable a correct view impact assessment.

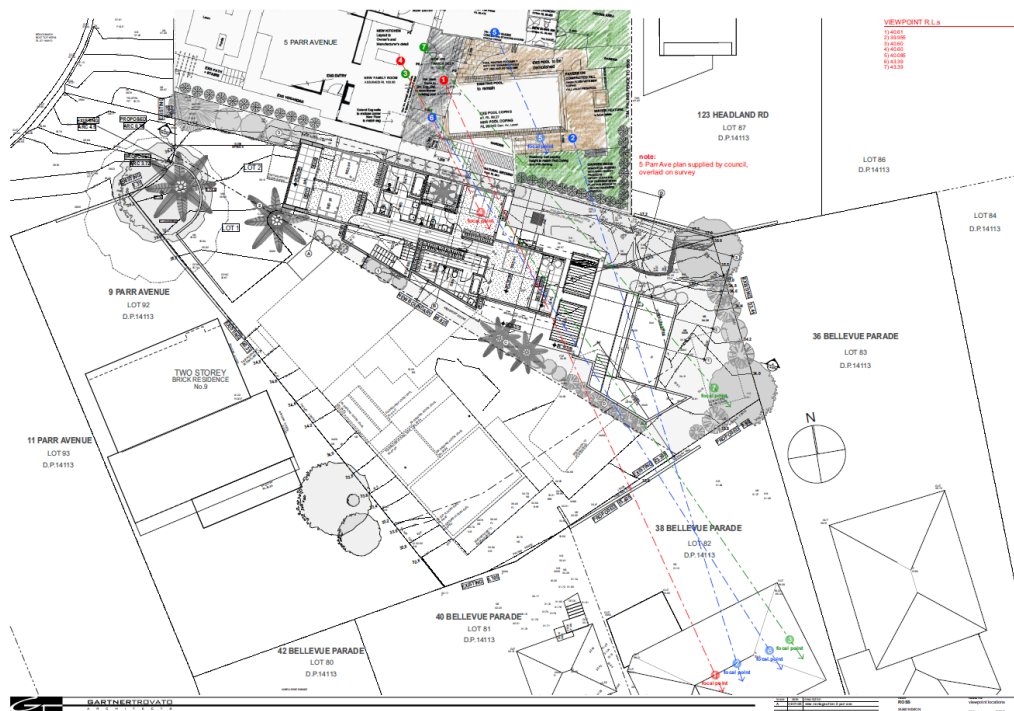


Figure 7 - Various vantage points at 5 Parr Avenue



The view corridors are located to the south/south-east from this property and comprises of a largely unobstructed view corridor towards the Queenscliff escarpment and Manly-North Head, including Curl Curl Beach and Curl Curl Lagoon. The view corridors include the interface between the land and water at Curl Curl Beach and the interface between the headlands and water at North Head and Curl Curl. As the view corridor is largely unobstructed and includes the interface between the land and water, including headland views, the view corridor is considered to be iconic in accordance with this planning principle. The main views in question are depicted in **Figures 8-13** below.



Figure 8 - Viewpoint 1: Existing view from ground floor rear deck (standing position)



Figure 9 - Viewpoint 2: Existing view from swimming pool area (standing position)



Figure 10 - Viewpoint 3: Existing view from ground floor living room (standing position)



Figure 11 - Viewpoint 4: Existing view from ground floor kitchen (standing position)



Figure 12 - Viewpoint 5: Existing view from ground floor rumpus room (i.e. 2nd living area)



Figure 13 - Viewpoint 6: Existing view from first floor balcony adjoining a bedroom (standing position)

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:

1 Parr Avenue

The views are enjoyed from standing positions from the ground floor deck that adjoins a living room (i.e. principal private open space area) and a first floor balcony adjoining bedrooms. The views are enjoyed over the southern side boundary of 1 Parr Avenue.

5 Parr Avenue

The views are enjoyed from standing and seated positions from various locations on this property, including the swimming pool area, ground floor living room, deck, kitchen and rumpus room and first floor bedrooms and a balcony. The views are enjoyed over the southern side boundary of 5 Parr Avenue. However, for the purpose of the view impact assessment, all montages and photos were based off views enjoyed from a standing position, which is considered to be 1.6m above the finished floor level (i.e. average eye level).

3. Extent of impact



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

Comment to Principle 3:

1 Parr Avenue

The development on Lot 2 would encroach slightly into the lower foreground of the Queenscliff escarpment view when viewed from the ground floor deck, with all remaining areas of the view being unaffected (see **Figure 14**). No water views or ridge line views are impacted, with the impact being confined to a highly obstructed district view. As such, the qualitative extent of view loss is considered to be negligible.



Figure 14 - Extent of view loss from 1 Parr Avenue (source: view impact photos taken by the assessing officer for DA2023/0958)

5 Parr Avenue

Figures 15 to 20 - Depict the extent of view loss from the various viewpoints



Figure 15 - Viewpoint 1: Impacted view from ground floor rear deck (standing position)



Figure 16 - Viewpoint 2: Impacted view from swimming pool area (standing position)



Figure 17 - Viewpoint 3: Impacted view from ground floor living room (standing position)



Figure 18 - Viewpoint 4: Impacted view from ground floor kitchen (standing position)



Figure 19 - Viewpoint 5: Impacted view from ground floor rumpus room (standing position)



Figure 20 - Viewpoint 6: Impacted view from first floor balcony adjoining a bedroom (standing position)

As evident in **Figures 15, 17 and 18**, the existing views towards North Head would be completely lost as a consequence of the proposed development, with approximately half of the existing ocean views being retained. These impacted areas comprise of the ground floor rear deck, kitchen and living room.



As evident in **Figures 16, 19 and 20**, the existing views towards North Head would be retained. These areas include the ground floor rumpus room, the swimming pool area and the first floor balcony (including bedroom areas). The views of Curl Curl Beach / Headland including the interface between the land and water are also retained from the first floor of the dwelling house, with the impact from the first floor largely being confined to the Curl Curl Lagoon and vegetation within the foreground of the view corridor.

While a loss off the iconic view from the ground floor kitchen, living room and rear deck will reduce the current level amenity for the occupants of 5 Parr Parade, it is noted that the view corridor is highly vulnerable to any impact as it is located directly over a side boundary from the front half of the property (i.e. the portion of the property located closest to the front boundary). When enjoying the view from the rear half of the property at the ground floor, including the rumpus room and swimming pool area, the North Head views are retained. The North Head views are also retained from the first floor of the dwelling house, including the views of Curl Curl Beach / Headland and the land/water interface of this view.

Considering the above, the qualitative extent of view loss from the entire property is considered to be **moderate** when considered in accordance with this planning principle.

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:

As the impact from 1 Parr Avenue is negligible, the consideration of a 'more skilful design' is not required for this property.

In turning to the reasonableness of the impact for 5 Parr Avenue, it is noted that the dwelling house on Lot 2 complies with all applicable built form controls and development standards (i.e. maximum building height, wall height, setbacks, landscaped open space and side building envelope controls). In considering the application of a 'more skilful design', it is noted that the retention of the North Head views from the ground floor living room, kitchen and rear decking would require a significant further reduction in the building footprint. Such a reduction would reduce the development potential and amenity of the future occupants of Lot 2, which is contrary to this planning principle.

The assessment finds that the proposed design constitutes a 'skilful design' in terms of view preservation, insofar as the building is setback nearly double the minimum rear setback requirement and quadruple the minimum side setback requirement (for the easternmost section) under the WDCP. The significant setbacks afforded from the rear and side boundary has enabled the retention of the North Head views from some parts of the ground floor (i.e. rumpus room and swimming pool area), which is considered to be a reasonable outcome in the context of a view corridor enjoyed over a shared side boundary. The existing views from the first floor of 5 Parr Avenue are also largely unaffected, with the most significant aspects of the



view retained as per the existing view.

In this regard, the development achieves a reasonable view sharing outcome in accordance with the NSW Land and Environment Court case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

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

Comment:

The development is an innovative design solution that will improve the urban environment.

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

Comment:

The development is not proposing to remove significant trees for the purpose of 'view gain'.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the requirements and objectives of Section D7 of the WDCP and the four planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

D8 Privacy

Section D8 of the WDCP requires as follows:

- 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 (ie 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.*

The development provides an appropriate response to the requirements of the control for the following reasons:

- Windows serving habitable rooms have been appropriately located to prevent direct overlooking into habitable rooms or private open space on adjoining properties.
- The elevated balconies at the rear of the dwelling include privacy screens on the side elevations of the balcony to mitigate overlooking into Lot 1, 123 Headland Road and 5 Parr Avenue.



- The elevated balconies are significantly separated from the downslope properties located to the rear of Lot 2, such that reasonable levels of privacy will be maintained to alleviate adverse privacy impacts.
- The large window W2-02 on the south-western elevation of the dwelling house that is orientated towards Lot 1 adjoins a stairwell and therefore, will not pose unreasonable privacy impacts to Lot 1 due to this area being used infrequently as it is merely a path of egress.

D9 Building Bulk

Section D9 of the WDCP requires as follows:

- 1. Side and rear setbacks are to be progressively increased as wall height increases.*
- 2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*
- 3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:
The amount of fill is not to exceed one metre in depth.
Fill is not to spread beyond the footprint of the building.
Excavation of the landform is to be minimised.*
- 4. Building height and scale needs to relate to topography and site conditions.*
- 5. Orientate development to address the street.*
- 6. Use colour, materials and surface treatment to reduce building bulk.*
- 7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.*
- 8. Articulate walls to reduce building mass.*

The development meets the requirements of this control for the following reasons:

- The development is highly articulated, includes varied wall plans and varied external finishes, steps away from the side boundaries as the building height increases and generally steps down in height with the slope of the land.
- The development does not result in excessive excavation and does not result in more than 1m of filling.
- Deep soil landscape zones with vegetation planting is provided around the curtilage of the building to appropriately soften the built form.

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 \$17,443 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,744,268.

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 demolition works and construction of a part two/part three storey dwelling house including a swimming pool, has been referred to the DDP due to the application being a Review of Determination of a previous Development Application that was refused by the DDP.

The application received a total of 4 submissions by way of objection. The issues raised within the submissions relate to; building bulk and scale, view loss, solar reflection, visual privacy, insufficient detailing on the plans in relation to measurement annotations, impacts on available on-street car parking and impacts on the structural integrity of adjoining buildings. The concerns raised within the resident submissions have been assessed throughout the report and are not considered issues that would warrant refusal of the application, with conditions being recommended to address the concerns in relation to solar reflection and the structural integrity of buildings.



The assessment made under the current review application has concluded that the amended development that is subject to this review application is substantially the same development as that which was refused, and has adequately responded to the reasons for refusal imposed under Development Application DA2023/0959. The amendments to the built form have appropriately reduced the bulk and scale of the building and increased the rear setbacks, such that the resultant development demonstrates a reasonable view sharing outcome in accordance with the view sharing planning principles established within the NSW Land and Environment Court case of *Tenacity Consulting v Warringah [2004] NSWLEC 140*.

Additionally, the amended application has resolved the stormwater and vehicular access 'insufficient information' reasons for refusal.

Accordingly, it is recommended that the original decision to refuse the Development Application be altered to an approval of the review application, subject to the recommended conditions attached to this report, which include a deferred commencement condition that precludes the consent from being activated until a Subdivision Certificate is issued for Lot 2.

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. THAT 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 REV2024/0028 for Review of Determination of Application DA2023/0959 for Demolition works and construction of a dwelling house including swimming pool and garage on land at Lot 91 DP 14113,7 Parr Avenue, NORTH CURL CURL, 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. Creation of Lot 2

The Subdivision Certificate must be issued for the creation of the subject allotment, being Lot 2, which was approved by Development Application DA2023/0957. The applicant must provide Council with proof of creation and registration of Lot 2 with the NSW Land Registry Services for



activation of this consent.

Reason: To ensure that the development is carried out on a lawfully created lot.

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
DA-201	D	Site Plan	Garter Trovato Architects	23 October 2024
DA-202	D	Lower Floor Plan House 2	Garter Trovato Architects	23 October 2024
DA-203	D	Ground Floor Plan House 2	Garter Trovato Architects	23 October 2024
DA-204	D	First Floor Plan House 2	Garter Trovato Architects	23 October 2024
DA-205	D	Elevations & Sections House 2	Garter Trovato Architects	23 October 2024
DA-206	D	Landscape Plan House 2	Garter Trovato Architects	23 October 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	1401698M	Garter Trovato Architects	11 July 2023
Geotechnical Report titled 'Report on Geotechnical Site Investigation for Subdivision and Construction of New	Project No. 22-	Crozier Geotechnical Consultants	20 January 2023



Dwellings at 7 Parr Avenue, North Curl Curl'	289 Issue No. 0		
Addendum to Geotechnical Report titled 'Geotechnical Assessment of Design Plans to propose works at 7 Parr Avenue, North Curl Curl'	Project No. 22-289	Crozier Geotechnical Consultants	24 October 2024
Arboricultural Impact Assessment titled '7 Parr Avenue, North Curl Curl'	N/A	Treeism Arboricultural Services	December 2022
Stormwater Management Plans titled SW1DA-B, SW2DA-A, SW100DA-B and SW200DA-B	DA-B	Barrenjoey Consulting Engineers	5 April 2024
Waste Management Plan titled 'New Dwelling on proposed Lot 2'	N/A	N/A	N/A

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

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

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

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	Referral - Ausgrid	N/A

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

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

4. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house. The Warringah Local Environmental Plan 2011 defines this land use as follows:

- **dwelling house** means a building containing only one dwelling.

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

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



5. Prescribed Conditions

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

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

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

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

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



on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

6. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



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

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

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

7. No approval for a domestic oil or solid fuel heating appliance

The fire place is not approved to be a domestic oil or solid fuel heating appliance.

Reason: The applicant has not sought consent for a domestic oil or solid fuel heating appliance.

8. No approval for secondary dwelling

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

FEES / CHARGES / CONTRIBUTIONS

9. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$17,442.68 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).



The monetary contribution is based on a development cost of \$1,744,268.00.

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.

10. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

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 SW200 DA-By in accordance with the concept drainage plans prepared by Barrenjoey Consulting Engineers, drawing number SW200 DA-B dated 05/04/2024. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. DRIANS model for the proposed stormwater management for Lot2 shall be designed in accordance with Northern Beaches Council's Water Management for Development Policy.



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

12. Erosion and Sediment Control Plan

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

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

13. Detailed Design of Stormwater Treatment Measures

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the Barrenjoey Consulting Stormwater plan 230603 revision DA-B dates 05.04.2024 and Council's Water Management for Development Policy.

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

Reason: Protection of the receiving environment.

14. Boundary Identification Survey

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

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

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

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



15. Compliance with Standards

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

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

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

16. External Finishes to Roof

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

17. 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

18. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below within 10 metres of the excavation perimeter, both internally and externally, including walls, ceilings, roof, structural members and other similar items. The reports must be prepared for the following properties:

- 5 Parr Avenue, North Curl Curl.
- 36 Bellevue Parade, North Curl Curl.
- 38 Bellevue Parade, North Curl Curl.



The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

DURING BUILDING WORK

19. Protection of Rock and Sites of Significance

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works. Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council (MLALC) are to be contacted.

Reason: Preservation of significant environmental features.

20. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for the street tree fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

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

Reason: Street tree protection.

21. Tree and Vegetation Protection

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



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

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

22. 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.

23. Installation and Maintenance of Sediment and Erosion Controls

Council proactively regulates construction sites for sediment management.

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



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

Reason: Protection of the receiving environment.

24. Substitution of Stormwater Treatment Measures

The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must submitted to the Principal Certifier for approval prior to installation.

Bioretention system and wetland must use the same filtration process based and media filter and vegetation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

25. 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.

26. Geotechnical Requirements

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

Reason: To ensure geotechnical risk is mitigated appropriately.

27. Survey Certificate

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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



Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

28. 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.

29. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

30. Cut and Fill

While building work is being carried out, the principal certifier must be satisfied that all soil removed from or imported to the site is managed in accordance with the following requirements:

- a) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to the Certifier.
- b) All fill material imported to the site must be Virgin Excavated Natural Material as defined in Schedule 1 of the Protection of the Environment Operations Act 1997 or a material identified as being subject to a resource recovery exemption by the NSW EPA.

Reason: To ensure soil removed from the site is appropriately disposed of and soil imported to the site is safe for future occupants.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

31. Landscape Completion

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

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan, unless otherwise imposed by conditions,
- c) the proposed Cabbage Tree Palm at the front of the property shall be replaced with a small locally native tree to attain 6 metres in height; generally selected from Northern Beaches Council's Native Plant Species Guide - Curl Curl Ward, or Council's Tree Guide,
- d) all tree planting shall be a minimum pre-ordered planting size of 45-75 litres or as otherwise scheduled if greater in size; meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and



maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,

e) mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,

f) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,

g) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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.

32. **Stormwater Treatment Measures Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must contain the following:

1. Detail on the stormwater treatment measures:

Intent of the stormwater treatment measures including modelled pollutant removal rates

Site detail showing catchment for each device

Vegetation species list associated with each type of vegetated stormwater treatment measure

Impervious area restrictions to maintain the water balance for the site

Funding arrangements for the maintenance of all stormwater treatment measures

Identification of maintenance and management responsibilities

Maintenance and emergency contact information

2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:

Activity description, and duration and frequency of visits

Additionally for vegetated devices:

Monitoring and assessment to achieve an 80 percent survival rate for plantings

Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure

3. Maintenance schedule and procedure - ongoing



Activity description, and duration and frequency of visits
 Routine maintenance requirements
 Work Health and Safety requirements
 Waste management and disposal
 Traffic control (if required)
 Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures

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

Reason: Protection of the receiving environment.

33. Post-Construction Dilapidation Report

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

Reason: To maintain proper records in relation to the proposed development.

34. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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



Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

35. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

36. House / Building Number

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

37. 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.

38. Swimming Pool Requirements

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

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

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

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

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

(d) A warning sign stating 'YOUNG CHILDREN SHOULD BE ACTIVELY SUPERVISED



WHEN USING THIS POOL' has been installed.

- (e) Signage showing resuscitation methods and emergency contact
- (f) All signage shall be located in a prominent position within the pool area.
- (g) Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life.

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

39. Landscape Maintenance

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

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

Reason: To maintain local environmental amenity.

40. Maintenance of Stormwater Treatment Measures

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

41. Geotechnical Recommendations

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



Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

In signing this report, I declare that I do not have a Conflict of Interest.

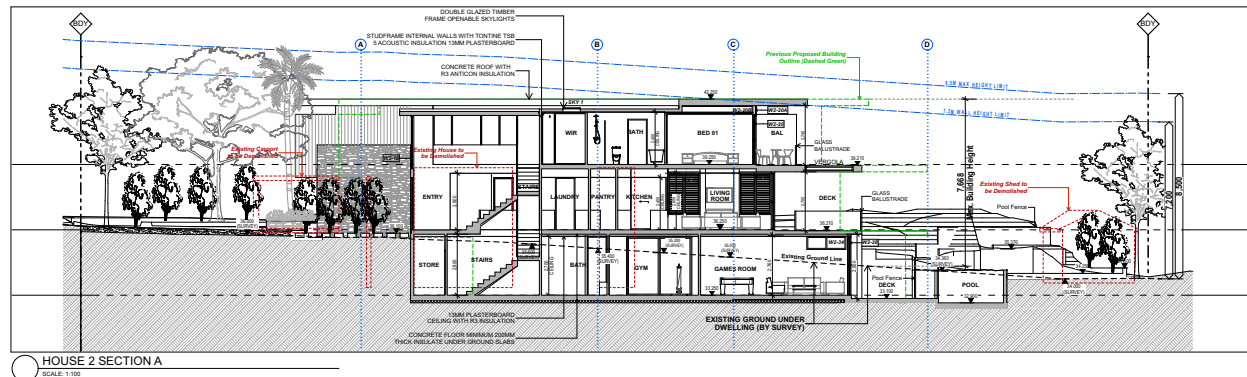
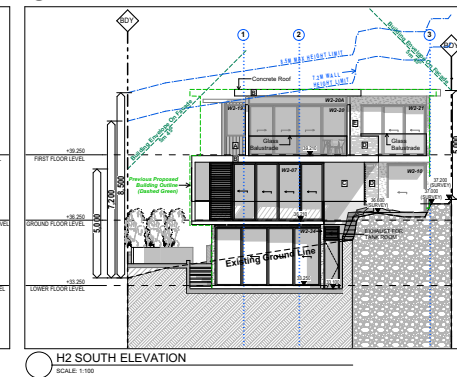
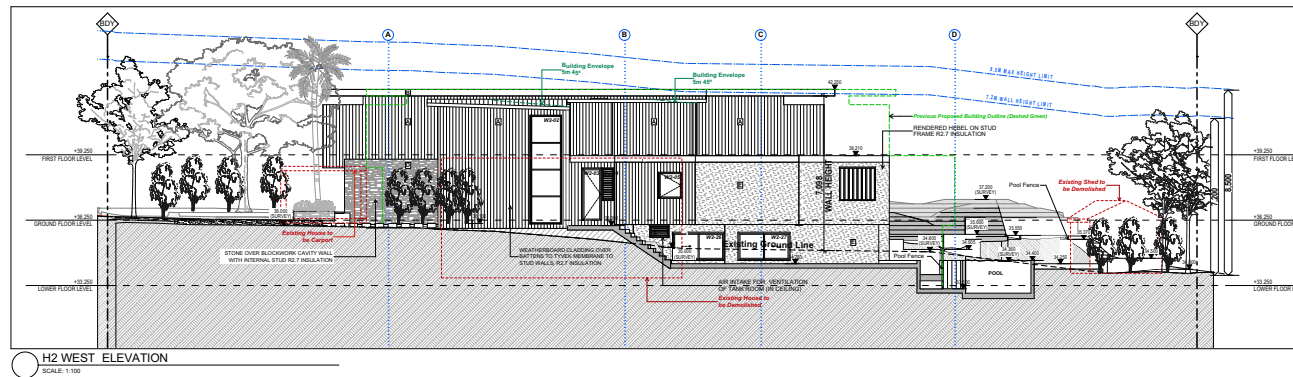
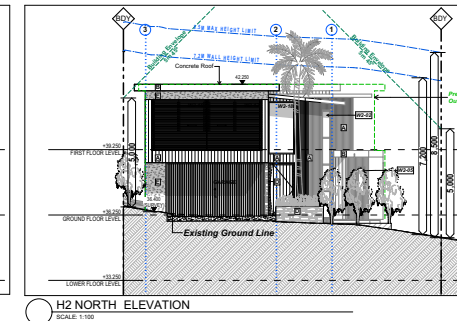
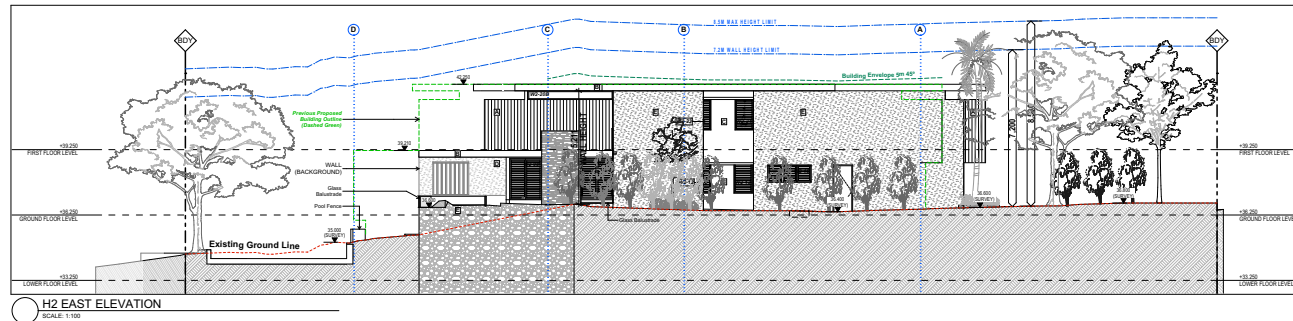
Signed

Steven Findlay, Manager Development Assessments

The application is determined on //, under the delegated authority of:

Steven Findlay, Manager Development Assessments





EXTERIOR FINISHES LEGEND

- TIMBER CLADDING, BURNT FINISH
- RENDER + PAINT FINISH RESINE "HALF ATHENS GREY"
- RENDER + PAINT FINISH RESINE "ACROPOLIS"
- SANDSTONE CLADDING
- CONCRETE, OFF FORM

WINDOW SCHEDULE BASIS H2

Window	Width	Height	Sill	Area
W2-02	2,000	1,500	200	1.50
W2-03	100	2,400	200	2.16
W2-04	200	1,500	1,100	0.83
W2-05	1,100	1,200	1,000	1.32
W2-06	1,000	2,000	1,100	2.70
W2-07	4,200	2,000	200	11.13
W2-08	1,470	1,500	900	2.79
W2-09	1,470	1,500	900	2.79
W2-10	1,800	2,000	200	4.68
W2-11	2,200	1,200	1,100	2.88
W2-12	800	1,400	900	1.19
W2-13	800	1,400	800	1.19
W2-14	2,200	2,000	200	5.28
W2-15	2,000	800	1,800	7.68
W2-16	2,470	2,300	200	5.69
W2-17	2,470	2,300	200	5.69
W2-18	1,200	2,400	0	2.88
W2-19	800	1,440	900	1.27
W2-20	4,000	2,300	200	10.35
W2-20A	4,000	400	2,000	1.60
W2-20B	1,500	400	2,100	1.05
W2-21	3,000	2,300	200	6.90
W2-22	1,000	2,400	200	2.40
W2-23	800	1,500	1,100	1.26
W2-24	800	1,500	1,100	1.26
W2-25	2,000	2,100	900	4.20
W2-26	2,400	1,300	1,000	3.12
W2-27	2,400	1,500	1,000	3.12
W2-28	4,000	2,100	200	11.10
W2-29	1,800	400	1,300	1.08
W2-30	1,800	400	1,300	1.08
W2-31	1,800	400	1,300	1.08
W2-32	1,800	400	1,300	1.08
W2-33	1,800	400	1,300	1.08
W2-34	1,800	400	1,300	1.08
W2-35	1,800	400	1,300	1.08
W2-36	1,800	400	1,300	1.08
W2-37	1,800	400	1,300	1.08
W2-38	1,800	400	1,300	1.08
W2-39	1,800	400	1,300	1.08
W2-40	1,800	400	1,300	1.08
W2-41	1,800	400	1,300	1.08
W2-42	1,800	400	1,300	1.08
W2-43	1,800	400	1,300	1.08
W2-44	1,800	400	1,300	1.08
W2-45	1,800	400	1,300	1.08
W2-46	1,800	400	1,300	1.08
W2-47	1,800	400	1,300	1.08
W2-48	1,800	400	1,300	1.08
W2-49	1,800	400	1,300	1.08
W2-50	1,800	400	1,300	1.08
W2-51	1,800	400	1,300	1.08
W2-52	1,800	400	1,300	1.08
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W2-54	1,800	400	1,300	1.08
W2-55	1,800	400	1,300	1.08
W2-56	1,800	400	1,300	1.08
W2-57	1,800	400	1,300	1.08
W2-58	1,800	400	1,300	1.08
W2-59	1,800	400	1,300	1.08
W2-60	1,800	400	1,300	1.08
W2-61	1,800	400	1,300	1.08
W2-62	1,800	400	1,300	1.08
W2-63	1,800	400	1,300	1.08
W2-64	1,800	400	1,300	1.08
W2-65	1,800	400	1,300	1.08
W2-66	1,800	400	1,300	1.08
W2-67	1,800	400	1,300	1.08
W2-68	1,800	400	1,300	1.08
W2-69	1,800	400	1,300	1.08
W2-70	1,800	400	1,300	1.08
W2-71	1,800	400	1,300	1.08
W2-72	1,800	400	1,300	1.08
W2-73	1,800	400	1,300	1.08
W2-74	1,800	400	1,300	1.08
W2-75	1,800	400	1,300	1.08
W2-76	1,800	400	1,300	1.08
W2-77	1,800	400	1,300	1.08
W2-78	1,800	400	1,300	1.08
W2-79	1,800	400	1,300	1.08
W2-80	1,800	400	1,300	1.08
W2-81	1,800	400	1,300	1.08
W2-82	1,800	400	1,300	1.08
W2-83	1,800	400	1,300	1.08
W2-84	1,800	400	1,300	1.08
W2-85	1,800	400	1,300	1.08
W2-86	1,800	400	1,300	1.08
W2-87	1,800	400	1,300	1.08
W2-88	1,800	400	1,300	1.08
W2-89	1,800	400	1,300	1.08
W2-90	1,800	400	1,300	1.08
W2-91	1,800	400	1,300	1.08
W2-92	1,800	400	1,300	1.08
W2-93	1,800	400	1,300	1.08
W2-94	1,800	400	1,300	1.08
W2-95	1,800	400	1,300	1.08
W2-96	1,800	400	1,300	1.08
W2-97	1,800	400	1,300	1.08
W2-98	1,800	400	1,300	1.08
W2-99	1,800	400	1,300	1.08
W2-100	1,800	400	1,300	1.08

ITEM 3.3	DA2023/1853 - 203 MCCARRS CREEK ROAD, CHURCH POINT - CONSTRUCTION OF A SECONDARY DWELLING
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PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to DA2023/1853 for Construction of a secondary dwelling on land at Lot 123 DP 607963, 203 McCarrs Creek Road, Church Point, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2025/192901
Attachments	↓1 Assessment Report ↓2 Site Plan & Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1853
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Responsible Officer:	Michael French
Land to be developed (Address):	Lot 123 DP 607963, 203 McCarrs Creek Road CHURCH POINT NSW 2105
Proposed Development:	Construction of a secondary dwelling
Zoning:	R5 Large Lot Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Ziba Design & Construction Pty Ltd

Application Lodged:	19/01/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	30/01/2024 to 13/02/2024
Advertised:	Not Advertised
Submissions Received:	10
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 225,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for the construction of a secondary dwelling, adjoined by a new portion of driveway and a hardstand parking space within the front portion of the site.

The application is referred to the Development Determination Panel (DDP) due to the application receiving five (5) or more objections during the notification period. The objections primarily focus on concerns related to environmental impacts caused by the development. The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. A total of ten (10) submissions were received, including nine (9) objections and one (1) submission in support of the application.

The development proposes variations to *Clause C1.23 Eaves*, *Clause D2.1 Character as viewed from*

a public place, and Clause D2.5 Front building line of the Pittwater 21DCP. Council's Landscape Officer has raised concerns with the proposed development, however on balance and subject to recommended conditions these concerns can be overcome. These issues are discussed in detail within the body of this report.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on the proposal 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 the recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the following:

- Addition of a secondary dwelling that consists of two (2) bedrooms, a bathroom, powder room, open plan living, dining and kitchen area, and an adjoining deck facing toward the front of the site.
- Addition of a new portion of driveway and a hardstand parking space, adjoining new landscaping works.

Application History

A Request for Further Information letter dated 14 March 2024 was sent to the applicant, outlining concerns identified by Council's Landscape Officer, Bushland and Biodiversity Officer, and Development Engineer. Additionally, the letter highlighted deficiencies in the submitted Architectural Plans and identified non-compliances with the Pittwater Local Environmental Plan 2014 (PLEP 2014) and the Pittwater Development Control Plan (PDCP).

In response, the applicant submitted amended plans and documentation to address these concerns. The revisions have satisfactorily addressed the concerns raised by Council's Bushland and Biodiversity Officer and Development Engineer. Additionally, the amended Architectural Plans have resolved the identified issues and non-compliance concerns. The assessment of Council's Landscape Officer's comments is provided later in this report, along with the justification for supporting the proposal despite raised concerns.

Furthermore, it should be noted that 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

Pittwater Local Environmental Plan 2014 - Zone R5 Large Lot Residential

Pittwater Local Environmental Plan 2014 - 5.4 Controls relating to miscellaneous permissible uses

Pittwater 21 Development Control Plan - C1.23 Eaves

Pittwater 21 Development Control Plan - D2.1 Character as viewed from a public place

Pittwater 21 Development Control Plan - D2.5 Front building line

SITE DESCRIPTION

Property Description:	Lot 123 DP 607963 , 203 McCarrs Creek Road CHURCH POINT NSW 2105
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of McCarrs Creek Road. The site is irregular in shape with an approximate frontage of 64m along McCarrs Creek Road and an approximate maximum depth of 130m. The site has a surveyed area of 6298m². The site is located within the R5 Large Lot Residential zone pursuant to the Pittwater Local Environmental Plan 2014. The site has a steep downward slope toward the western frontage of the property. The site has a mix of vegetation throughout the site. There are no details of any threatened species on site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by similar dwellings within a R5 Large Lot 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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and	<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 in relation to multiple issues raised by planner and referral bodies. Further information is detailed elsewhere within this report. The proposal as amended, subject to the applied conditions of consent, 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 Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning & Design, dated 26 October 2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 30/01/2024 to 13/02/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Neal Bannister	201 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Davyd Bornstein	4 Burraga Avenue TERREY HILLS NSW 2084
Mrs Adrienne Jan Sun	219 McCarrs Creek Road CHURCH POINT NSW 2105
Mrs Karrayan Rozenberg	152 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Philip Corbett	158 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Ian Robert Johnson Ms Diane Jayne Dromgold	221 McCarrs Creek Road CHURCH POINT NSW 2105
Mrs Edna May Blanchard	230 McCarrs Creek Road CHURCH POINT NSW 2105
Mr James Bornstein	Po Box 259 MONA VALE NSW 1660
Withheld Withheld	CHURCH POINT NSW 2105
Dr Joseph Janjis	9 Walker Place CHURCH POINT NSW 2105

The following issues were raised in the submissions:

- Submission (in support)
- *R5 Large Lot Residential zone* (Pittwater Local Environmental Plan 2014)
- *Clause D2.1 Character as viewed from a public place* (Pittwater Development Control Plan)
- Bushland & Biodiversity referral response
- Landscape referral response
- Design of the secondary dwelling
- Location of the secondary dwelling
- Property value
- Stormwater
- Ecosystem
- Illegal tree removal
- Traffic/road use
- Views from adjoining sites
- Architectural Plans say 'Not for Construction'

- Future development/ previous consents
- Light Spill
- DA notification process
- Comments in provided documentation
- Cost of works

The above issues are addressed as follows:

- **Submission (in support)**

One (1) submission was received in support of the proposal

Comment:

No assessment of this submission is required.

- ***R5 Large Lot Residential zone (Pittwater Local Environmental Plan 2014)***

The submissions raised concern regarding compliance with the zone objectives.

Comment:

Assessment against the objectives of the *R5 Large Lot Residential zone* is detailed elsewhere within this report. The proposal is considered to be consistent with the objectives of the zone.

- ***Clause D2.1 Character as viewed from a public place (Pittwater Development Control Plan)***

The submissions raised concerns regarding compliance with *Clause D2.1 Character of the PDCP as viewed from a public place*.

Comment:

Assessment against *Clause D2.1 Character as viewed from a public place* of the PDCP is detailed elsewhere within this report. The proposal is considered supportable and acceptable against the control.

- **Bushland and Biodiversity referral response**

The submissions raised concerns with the application from a bushland and biodiversity perspective.

Comment:

Council's Bushland and Biodiversity Officer has reviewed the application and recommended approval, subject to the conditions of consent. Initial iterations of the proposal raised several concerns; however, the final review of the amended proposal concluded that the development has been appropriately designed and sited, and will be managed to prevent any significant adverse environmental impact. Further information is detailed elsewhere within this report.

- **Landscape referral response**

The submissions raised concerns with the application from a landscaping perspective.

Comment:

The concerns raised by Council's Landscape Officer, as detailed elsewhere within this report,

are addressed in other sections of this report under the following headings:

- *R5 Large Lot Residential Zone*

- *Clause D2.1 Character as Viewed from a Public Place*

Additionally, the applicant has addressed the identified non-compliances with *Planning for Bushfire Protection 2019* by submitting a report from a Certified Bushfire Consultant confirming that the amended Landscape Plans form compliance with its requirements.

In this regard, it is considered that the proposal is supportable.

Furthermore, Councils Landscape Officer has provided recommended conditions of consent which form part of this approval.

- **Design of the secondary dwelling**

The submissions raised concerns regarding the design of the dwelling, particularly its two (2) storey structure.

Comment:

A Request for Further Information Letter was sent to the applicant on 14 March 2024 requiring that the proposal adhere to a single-storey structure as required by *Clause C1.11 Secondary Dwellings and Rural Worker's Dwellings*.

The proposal as amended presents a dwelling that is a single storey.

storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include—

- (a) a space that contains only a lift shaft, stairway or meter room, or
- (b) a mezzanine, or
- (c) an attic.

It is considered that the bin area below the ground floor does not qualify as a 'storey.'

Furthermore, no concerns are raised regarding the design of the dwelling under the below planning considerations.

The proposal is supportable in this regard.

- **Location of the secondary dwelling**

The submissions raised concerns regarding the location of the secondary dwelling, noting that it should be located to the rear of the dwelling, away from the front building line. Further concern is raised that the majority of development on the high-side of McCarrs Creek Road is setback toward the rear of the site.

Comment:

The amended proposal positions the secondary dwelling outside the front setback area, with its location toward the front of the site guided by bushfire constraints, as outlined in the provided bushfire documentation. The siting also minimises tree loss and excavation while considering bushfire risk, topography, and the existing driveway. The works within the front setback area are ancillary to the dwelling and do not compromise the compliance of the dwelling. Given

these factors, the proposal is considered supportable.

- **Property Value**

The submissions raised concerns regarding the impact of the secondary dwelling on the property value of surrounding sites.

Comment:

Property value impacts are not a relevant planning consideration for Council under the Section 4.15 of the *EP&A Act 1979*. However, impacts raised as potential causes of property devaluation, such as solar access, privacy and views, have been assessed pursuant to relevant planning controls. Compensation for construction impacts or impacts of the proposed development are also not relevant planning considerations under the Section 4.15 of the *EP&A Act 1979*.

- **Stormwater**

The submissions raised concerns about the proposal's impact on stormwater runoff, highlighting existing damage caused by overland flows, siltation, and erosion. They also emphasised the risks to safety and potential damage, particularly for road users, properties below the site, and McCarrs Creek. Additionally, the submissions questioned the need for future stabilisation works to mitigate these stormwater impacts.

Comment:

While the submissions raised concerns about existing damage caused by overland flows, siltation, and erosion, it is important to note that such existing damage is not a consideration for this assessment. The focus of the assessment is on the proposed development and its compliance with relevant stormwater management requirements.

The provided information, including stormwater management plans, has been reviewed by Council's Development Engineer, who has confirmed that the proposal sufficiently addresses the above concerns. The proposal is accompanied by conditions that will ensure stormwater management measures are implemented effectively, minimising any potential impacts on the surrounding environment.

Regarding the future stabilisation works, these are not within the scope of this assessment, as they relate to potential future works by Council and are not directly tied to the current proposal.

The proposal is considered supportable in this regard.

- **Ecosystem**

The submissions raised concerns regarding adverse impacts on the ecosystem, specifically the destruction of existing habitats and disruptions to natural watercourses, with particular emphasis on the watercourse along the site's southern region.

Comment:

The proposal has been assessed against the relevant environmental planning controls, and both Council's Bushland and Biodiversity Officer and Development Engineer have reviewed the application in this regard. Based on their assessment, the proposal is supportable in the above

regard. Conditions of consent have been included to ensure that the development minimises disturbance to existing natural features and implements appropriate stormwater management.

Additionally, it is important to note that the assessment focuses on the impacts of the proposed development itself, rather than pre-existing environmental conditions. While concerns have been raised about habitat destruction and watercourse disruption, the proposal is considered to have been designed to minimise its footprint and is considered to adequately include mitigation measures to address any potential impacts. Given these considerations, the proposal is acceptable in this regard.

- **Illegal Tree Removal**

The submissions raised concerns regarding the unauthorised removal of trees, particularly to create space for the proposal. It was also noted that some trees were illegally removed from adjoining properties.

Comment:

The removal or damage of native trees to accommodate this proposal is not a matter for assessment under this application. Council's Compliance Team is responsible for investigating and enforcing compliance with relevant legislation and policies. The team is aware of the reported tree removal and will determine any necessary enforcement actions. Additionally, any damage to trees on adjoining properties is a civil matter between the affected parties and falls outside the scope of this assessment.

- **Traffic/ road use**

The submissions raised concerns about the proposal's impact on traffic and road use, noting that it could negatively affect future road development and necessitate additional roadworks to accommodate the project.

Comment:

The addition of the secondary dwelling is not expected to create any traffic or road use issues. The submitted documentation demonstrates that safe access to and from the site has been achieved.

Additionally, a condition of consent has been included to ensure that the applicant maintains public footways and roadways adjacent to the site in a safe condition throughout the construction period. Any future roadworks are outside the scope of this assessment and are not a consideration for this application.

- **Views from adjoining sites**

The submissions raised concerns regarding the negative impact on views from adjoining sites.

Comment:

Assessment of the application has determined that the proposal does not cause unreasonable view loss for adjoining properties. View impacts have been evaluated against relevant planning controls and concerns have been adequately addressed by the proposal. The proposal is considered supportable in this regard.

- **Architectural Plans say 'Not for Construction'**

The submissions raised concerns about the Architectural Plans being marked "Not for Construction."

Comment:

The notation "Not for Construction" on the Architectural Plans is standard for DA stage plans. These plans are intended for assessment purposes only and are not final construction documents. A Construction Certificate (CC) will be required before any building work can commence, at which stage detailed construction plans must be submitted and certified for compliance with relevant regulations.

- **Future development/ previous consents**

The submissions raised concerns about the potential for further development, such as subdivision, and whether the conditions of previous consents would be adhered to.

Comment:

The assessment of this application is limited to the proposed development and does not consider potential future developments, such as subdivision. Additionally, compliance with conditions of previous consents is managed separately and is not within the scope of this assessment.

- **Light Spill**

The submissions raised concerns about an existing external light positioned above the proposed front yard/parking area, which could potentially distract passing motorists and especially blind those exiting the driveways below. It was also noted that the proposal could worsen this issue, posing a danger to drivers.

Comment:

Although there is no specific control regulating light spill, the design includes vegetative screening to mitigate any potential impact on surrounding areas. Additionally, the dwelling is sufficiently setback from the front building line, which helps reduce the likelihood of any adverse effects on the public realm or nearby driveways. Given these considerations, the proposal is supportable.

- **DA Notification Process**

The submissions raised concerns regarding the DA notification process, particularly that the notification emails only went to the adjoining sites and not the broader community.

Comment:

The proposal was notified in accordance with Council's Community Participation Plan (CPP), which specifies notification to adjoining sites. The process followed the required procedures as outlined in the CPP.

- **Comments in the provided documentation**

The submissions raised concerns regarding the accuracy of the Statement of Environmental Effects, Geotechnical Report and Arborist Report.

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.

Additionally, concerns raised about the Geotechnical and Arborist Reports were addressed through assessments by Council's Development Engineer, Landscape Officer, and Bushland and Biodiversity Officers, who raised no concerns.

- **Cost of works**

The submissions raised concerns regarding the detailed cost of works.

Comment:

The applicant has provided a cost summary report, which outlines the estimated cost of works for the proposed development. The provided information is considered sufficient for the purposes of the assessment.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Updated comments 18.12.2024: An Amended Landscape Plan (revision G) prepared by Space Design and a letter from a qualified Bushfire consultant for Asset Protection Zone compliance is submitted for assessment. The Asset Protection Zone compliance letter from Clarke Dowdie & Associates indicates that proposed works under the Amended Landscape Plan "complies with the requirements of an 'Asset Protection Zone' (APZ) as specified in Appendix 4 of Planning for Bushfire Protection 2019". The Amended Landscape Plan presents a landscape solution in consideration of the requirements of Planning for Bushfire Protection, and this is supported by the Asset Protection Zone compliance letter, however, Landscape Referral maintain the concerns regarding tree canopy preservation that is able to be altered under the provisions of Planning for Bushfire Protection guidelines. The Asset Protection Zone compliance letter identifies that the APZ has been designed and will be managed to ensure: 1. Minimal fuel conditions, mitigating direct flame contact and radiant heat impacts. 2. Less than 15% canopy cover (at maturity) within the "Extent of Works" area. 3. Trees (at maturity) do not touch or overhang the building, and lower limbs are removed up to 2 meters above ground level. 4. Adequate canopy separation (2–5 meters), with smooth-barked and evergreen tree species preferred. 5. Vegetation gaps slow the progress of bushfires toward the building. 6. Shrubs are not under trees, are restricted to less than 10% ground

Internal Referral Body	Comments
	cover, and are positioned at least twice their height away from exposed windows and doors. No concerns are raised with point 1, 5 and 6, and point 4 can be managed, however existing and proposed trees across the property, including in the area documented as 'extent of works' on the Landscape Plan and referenced in the Asset Protection Zone compliance letter, exceed the 15% canopy coverage recommended in point 1, and proposed tree planting (SG x 2) along the front boundary and in close proximity does not accord to point 4. Therefore the expectation for retention of existing trees and provision of new tree planting as illustrated on the Amended Landscape Plan is exceeding the guidelines of Planning for Bushfire Protection. Landscape Referral note that the existing trees proposed for retention (ie. trees 6, 9, 11, 13, 14, 25, 16, 17) are all tall trunked species from 10 to 25 metres in height such that the proposed secondary dwelling is therefore exposed visually to the streetscape as any understorey planting is limited by restrictions in density permitted under the Planning for Bushfire Protection guidelines. It is worth noting that all these trees also are only fair to poor condition that may warrant removal in the future, noting that proposed tree planting is indicated on the Amended Landscape Plan. The overall scheme additionally relies on existing trees within the road reserve. The proposed landscape treatment within the front setback is compromised by the requirements of Planning for Bushfire Protection that is at odds with the Pittwater LEP objectives of zone R5 Large Lot Residential and principally "To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality" and "To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses "; and Pittwater DCP control D2.1 Character as viewed from a public place; as the proposed secondary dwelling is prominent to the streetscape that is unable to be softened to reduce the bulk and scale, and the proposal alters the existing character of the locality as presented to the streetscape. Should the Assessing Planning Officer determine approval, landscape conditions shall be provided. <u>Planner Comment:</u> The concerns raised by Council's Landscape Officer, as outlined above, are addressed in other sections of this report under the following headings: - <i>R5 Large Lot Residential Zone</i> - <i>Clause D2.1 Character as Viewed from a Public Place</i> Additionally, the applicant has addressed the identified non-compliances with <i>Planning for Bushfire Protection 2019</i> by submitting a report from a Certified Bushfire Consultant confirming that the amended Landscape Plans form compliance with its requirements.

Internal Referral Body	Comments
	Further comments 20.11.2024 following updated Landscape Plans: To clarify the Landscape Referral issues I note that the DCP landscape requirements for the C4 zone contradict the provisions of Planning for Bush Fire Protection. Essentially the DCP was adopted without recognition of the role that Planning for Bush Fire Protection establishes to protect residential properties. The issues remain as: 1. In terms of the amended landscape plans in isolation and with the extent of planting proposed, the landscape outcome of C4 is achieved. 2. However, when the requirements of Planning for Bush Fire Protection are applied, the quantity of planting (tree coverage and densities of other planting) are over and above what is advised in Planning for Bush Fire Protection (see below *). 3. Approval of the amended landscape plans with the tree canopy coverage and other planting densities will expose Council to potential risk from loss of life and property should all the planting coverage and densities as documented in the amended landscape plans be established. 4. So to assess the realistic landscape outcome, documentation that indicates an compliant landscape scheme to Planning for Bush Fire Protection is required – the registered bushfire consultant or similar professional you have suggested needs to works with the landscape architect. 5. The resultant landscape plan will show that a scattered landscape solution will be presented and that is why I have suggested that the front setback is inadequate. 6. At the end of the day, if Planning is Ok as indicated then I will progress with a refusal but with landscape conditions should Planning, with respect to all other controls, accept the proposal. Planning for Bush Fire Protection landscape requirements for Inner Protection Zones (IPZ *) are: Trees - tree canopy cover should be less than 15% at maturity - trees at maturity should not touch or overhang the building - lower limbs should be removed up to a height of 2m above the ground - tree canopies should be separated by 2 to 5m - and preference should be given to smooth barked and evergreen trees. Shrubs - create large discontinuities or gaps in the vegetation to slow down or break the progress of fire towards buildings should be provided - shrubs should not be located under trees - shrubs should not form more than 10% ground cover - and clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation. Grass

Internal Referral Body	Comments
	- grass should be kept mown (as a guide grass should be kept to no more than 100mm in height); and leaves and vegetation debris should be removed. * The Bushfire Report nominates 24 metres as Inner Protection Zone and with the Inner Protection Zone of the existing dwelling upslope, the majority of the site is thus under this category. Updated comments 06.08.2024: The amended Bush Fire Report indicates that the siting of the secondary dwelling in the proposed location is appropriate in terms of bush fire protection. However this does not consider Pittwater Local Environmental Plan (PLEP) and Pittwater Development Control Plan (PDCP) that are to be examined, including minimising impacts on environmentally sensitive locations and scenic quality as described under PLEP clause R5 Large Lot Residential zone, and PDCP controls C1.1 Landscaping; D2.1 Character as viewed from a public place; and D2.5 Front building line. The frontage of the proposed development provides a 1.98m metre wide landscape zone that is unable to support any meaningful planting to reduce the bulk and scale of the development as required by controls C1.1, D2.1, and D2.5. Between the landscape zone and the proposed secondary dwelling an expansive hardstand area further exacerbates the prominence of the built form that is unable to be softened by effective landscape treatment. Landscape Referral consider that the frontage from the front boundary to the proposed secondary dwelling should be landscape area to permit adequate landscape treatment including scattered tree planting and other planting to soften the built form. As the property is bushfire affected, the depth of the landscape area is critical to establishing a suitable setback that can support planting without compromising the provision of Planning for Bush Fire Protection. The driveway and hardstand is able to be located upslope of the proposed secondary dwelling without impacting bush fire protection. As stated previously without such changes the built form will be prominent. <i>Previous comments:</i> Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause R5 Large Lot Residential zone, and the following Pittwater 21 DCP controls (but not limited to): B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; D2 Bayview Heights Locality. The site exists upon R5 Large Lot Residential zone land and the landscape objectives of the zone includes the provision of: residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality; and limited range of other land uses of a low intensity and scale, compatible with

Internal Referral Body	Comments
	surrounding land uses. The property is certified Bush Fire prone land, and able to be maintained in accordance with the landscape guidelines of Planning for Bush Fire Protection 2019, and an asset protection zone wholly within the property is proposed. An Arboricultural Impact Assessment (AIA) report is submitted identifying seven prescribed existing trees that are impacted by the proposed development and requiring removal should the application be approved, as well as tree protection measures for existing trees retained in proximity to the development works. A Landscape Plan is submitted that nominates replacement locally native tree planting and other planting. The current landscape character of the area features residential dwellings set back from the street, with a prominent frontage within the property occupied by tall canopy trees. The proposed development is anticipated to deviate from this established character, introducing a more pronounced built form that would be visible from the roadway, potentially altering the streetscape significantly. The encroachment of the proposed development works is contrary to Pittwater DCP control D2.5 Front Building Line, and the Statement of Environmental Effects (SoEE) suggests that the location of the secondary dwelling is best sited as proposed due to constraints from topography, tree coverage, bushfire and the existing driveway. Landscape Referral consider that the site conditions are conducive to an alternative location of the secondary dwelling and associated driveway hardstand for the following reasons: the topography is a consistent slope; the only tree in proximity upslope proposed for retention is tree 6 which is rated as a low retention value tree in the AIA report and has only fair health and vitality, and with the provisions of Planning for Bush Fire Protection 2019 is most unlikely to be retained in proximity to any dwelling; and connection to the existing driveway upslope does not present any design constraints. Landscape Referral do not support the proposal in terms of landscape outcomes for the following reasons: • the proposed front setback contrary to Pittwater DCP control D2.5 Front Building Line, does not establish any meaningful landscape planting to reduce the built form prominence of the secondary dwelling to the streetscape, and likewise in consideration of control C1.1, the proposed secondary dwelling is not secondary to landscape as existing trees are high canopy trees such that only an increased front setback, similar to adjoining properties, with retained trees may be seen as providing a secondary outcome. • existing trees 14, 15 and 16 proposed for retention and located in close proximity to the altered ground levels forward of the proposed secondary dwelling facing the streetscape are likely to be impacted by excavated fill material proposed to support the retaining walling

Internal Referral Body	Comments
	and hardstand driveway. • the proposed planting within the limited front setback (approximately 2 metres) does not provide any planting to soften the built form and the nominated planting shown on the Landscape Plan is low height planting to 1 metre high. • regardless of the above, the front setback width is inadequate to support any tree planting to maintain the landscape character intent of Pittwater LEP clause R5 and Pittwater DCP control C1.1.
NECC (Bushland and Biodiversity)	AMENDED COMMENTS Amended documents have been submitted including amended Master Set plans as well as an amended Landscape plan. No additional vegetation or tree removal is being proposed. The outcome of the Biodiversity Referral is not altered by these proposed changes and no additional conditions are recommended. The development is designed, sited and will be managed to avoid any significant adverse environmental impact. Conditions are recommended. AMENDED COMMENTS Additional information has been provided in order to address issues raised in the original biodiversity referral. The submitted amended bushfire report provides additional evidence in relation to the proposed location of the secondary dwelling. The report confirms that locating the secondary dwelling in another location would require the establishment of a larger asset protection zone that would have an increased environmental impact. Therefore no objections are raised in relation to the selected location based on these grounds. The proposal has been submitted with an Arboricultural impact assessment (Arbortech Tree Garden and Care, November 2023). A total of 20 trees have been assessed and the report recommends the removal of 9 trees (1, 2, 3, 4, 5, 7, 8, 19 and 20). Tree 1 has been approved for removal under TA2022/0583 whereas trees 19 and 20 are exempt by height and species respectively and do not require Council's approval to be removed. Trees 1 and 2 are exotic species and no objection is raised as to their removal. Trees 3, 4, 5, 7 and 8 are all prescribed species that will need to be replaced. Tree 12 is shown to be dead and no objections are raised in relation to its removal. The submitted landscape plan includes replacements for prescribed canopy trees proposed for removal (T3, 4, 5, 7 and 8) and is found to be compliant with the requirements of PLEP Clause 7.6 and PDGP B4.2, B4.4 and B4.18. The development is designed, sited and will be managed to avoid any significant adverse environmental impact. Conditions are recommended.

Internal Referral Body	Comments
	ORIGINAL COMMENTS The comments in this referral relate to the following applicable controls and provisions: • Planning for Bushfire Protection 2019 • SEPP (Resilience and Hazards) 2021 - Coastal Environment Area • Pittwater LEP - Clause 7.6 Biodiversity Protection • Pittwater DCP - Clause B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor • Pittwater DCP - Clause B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor • Pittwater DCP - Clause B4.18 Heathland/Woodland Vegetation The proposal has been submitted with an Arboricultural impact assessment (Arbortech Tree Garden and Care, November 2023). A total of 20 trees have been assessed and the report recommends the removal of 9 trees (1, 2, 3, 4, 5, 7, 8, 19 and 20). Tree 1 has been approved for removal under TA2022/0583 whereas trees 19 and 20 are exempt by height and species respectively and do not require Council's approval to be removed. Trees 1 and 2 are exotic species and no objection is raised as to their removal. Trees 3, 4, 5, 7 and 8 are all prescribed species that will need to be replaced. Tree 12 is shown to be dead and no objections are raised in relation to its removal. The submitted landscape plan includes a native planting schedule that needs to be amended to include like for like replacement trees to compensate for the proposed prescribed tree removals. Otherwise, compliance with Pittwater LEP 7.6 and PDOP B4.2, B4.4 and B4.18 cannot be reached due to net loss of canopy on the site. The proposal has also been submitted with a Bushfire report that has awarded a level of risk of BAL-29 to the site and recommended that a 24m asset protection zone be established (APZ). This APZ can be self contained within the site. Upon review of the provided documentation it is the opinion of the Biodiversity referral team that the proposal has not appropriately addressed the hierarchy of avoidance and minimisation of impacts to the natural environment set out in the NSW Biodiversity Conservation Act. Alternative designs should be explored to ensure that avoidance and minimisation of impacts has occurred and retention of native vegetation and canopy trees has been maximised.
NECC (Development Engineering)	The submitted plans have not addressed the requirement for on-site detention. On-site detention is required for the secondary dwelling in accordance with Table 7 of Section 9.3.1 of the Water Management

Internal Referral Body	Comments
	for Development Policy Version 2 26 February 2021. Engineering Comments 25.07.24 Amended stormwater management plans have been provided with the provision of on-site detention. Development engineering raises no further objections to the proposed development, subject to conditions. Engineering Comments 02.10.24 I have reviewed the amended Architectural and associated plans and confirm that the existing engineering conditions of consent are applicable.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, the Department of Planning, Industry and Environment (DPIE) and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.
Roads and Maritime Service - Roads Act 1993, s138 (Non-integrated)	Reference is made to Council's referral dated 24 January 2024 regarding the abovementioned application, which was referred to Transport for NSW (TfNSW) for concurrence under Section 138 of the Roads Act 1993. TfNSW has reviewed the submission and advises that that McCarrs Creek Road, at this location, is a 2000 series regional classified road under the care and control of Council and is capitalised as a Council asset. It is noted that a new driveway and entry gate on the road reserve was approved as part of a previous DA2022/143 and the current application does not propose any additional works within the

External Referral Body	Comments
	road reserve of McCarrs Creek Road. As such, TfNSW has no requirements for the proposed development as the proposed development is unlikely to have a significant impact on the classified road network.

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.1396826S dated 28 September 2023).

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

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
(2) Development consent must not be granted for development to which this Part applies unless— (a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and (b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and (c) The total floor area of the secondary dwelling is:	a) Complies b) Complies c) Complies: Permissible under <i>Clause 5.4 Controls relating to miscellaneous permissible uses</i> of the Pittwater Local Environmental Plan 2014.

(i) no more than 60m ² , or (ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area.	
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Clause 53 – Non-discretionary development standards—the Act, s 4.15	
Standard	Compliance/Comment
(a) For a detached secondary dwelling - a minimum site area of 450m ² .	Complies: Site Area- 6298m ²
(b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	Complies: The proposal will provide an extra parking space, related to the secondary dwelling.

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.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.7m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.10 Heritage conservation	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment**Zone R5 Large Lot Residential**

Zone Objectives

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*

Comment:

The proposal is consistent with this objective, as it maintains the rural character of the area while incorporating design measures to minimise environmental and visual impacts. The amended plans address concerns related to landscaping, biodiversity, and built form integration within the existing setting.

- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*

Comment:

The proposal does not compromise the future development potential of urban areas, as it aligns with the objectives and purpose of relevant controls and maintains appropriate lot sizing and layout.

- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*

Comment:

The proposal will not generate excessive demand for public services or infrastructure. Nor will it prevent future possibility of the introduction of public services or infrastructure

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

Comment:

The proposed development does not introduce elements that would create an unacceptable conflict with adjoining zones.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Comment:

The proposal aligns with this objective by maintaining a residential use that is low in intensity and consistent with the character of the surrounding area.

5.4 Controls relating to miscellaneous permissible uses

l) Secondary dwellings

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

- 60 square metres,
- 25% of the total floor area of the principal dwelling.

Comment:

The proposed secondary dwelling has a total floor area of 98.3m², which is permissible under this clause. Given that the primary dwelling has a total floor area of 397.35m², any secondary dwelling with a total floor area up to 99.34m² complies with the requirements.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	30m Land zoned R5 Large Lot Residential adjoining McCarrs Creek Road	0.3m (retaining wall) 3.8m (hardstand) 7m (deck) 10m (dwelling)	99%	No

Rear building line	20m	complies	N/A	Yes
Side building line	6.5m (north)	complies	N/A	Yes
	6.5m (south)	complies	N/A	Yes
Building envelope	3.5m (north)	Within envelope	N/A	Yes
	3.5m (south)	Within envelope	N/A	Yes
Landscaped area	80%	81.3% (5120m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.2 Bayview Heights Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B4.18 Heathland/Woodland Vegetation	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	No	Yes
D2.1 Character as viewed from a public place	No	Yes
D2.3 Building colours and materials	Yes	Yes
D2.5 Front building line	No	Yes
D2.6 Side and rear building line	Yes	Yes
D2.7 Building envelope	Yes	Yes
D2.9 Landscaped Area - Non Urban	Yes	Yes
D2.11 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D2.12 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D2.13 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.23 Eaves

Merit Consideration

Clause C1.23 Eaves requires dwellings to incorporate eaves on all elevations with a minimum width of 450.0mm. The proposed dwelling house does not include eaves on all elevations as part of the design.

The underlying outcomes of this clause are as follows:

- ***Housing that reflects the coastal heritage and character of Pittwater.***
- ***Optimise roof forms.***
- ***Appropriate solar access and shading is achieved.***

Comment

The proposed secondary dwelling does not include eaves on all elevations as it incorporates a flat roof design. The BASIX Certificate and location of the dwelling demonstrates that the proposal will be consistent with the underlying outcomes, particularly in relation to achieving adequate shading to the subject dwelling and avoiding any overshadowing to adjoining sites. Furthermore it is considered that the dwelling adequately reflects the coastal heritage and character of Pittwater.

In this regard, it is considered that the proposal is supportable.

D2.1 Character as viewed from a public place

Description of non-compliance

Clause D2.1 Character as viewed from a public place requires the following:

1. *Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place. Parking structures must be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser.*
2. *Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.*

Requirement 1

The proposal does not comply with the requirement that parking structures be located behind the front building line. In this instance, the hardstand parking area is positioned forward of the front building line and the primary building, with the parking structure located a minimum 3.8m metres from the front boundary line.

Initially, the application proposed a garage under the secondary dwelling. However, this compromised compliance with other controls, and adjustments were made, requiring the parking to be relocated to a hardstand area. Alternative parking locations were considered, but placing the parking behind the secondary dwelling would have caused greater ecological and visual impacts, as it would necessitate significant excavation and the removal of existing trees and shrubs.

To minimise impacts, the hardstand area in the front setback was reduced in size and is now dimensioned on the plans to reflect its compact nature. The reduction in hardstand area was undertaken deliberately to accommodate meaningful landscaping at the front of the property. This balance between minimising the hardstand size and providing landscaping is considered to support compliance with the intent of this clause.

Requirement 2

The secondary dwelling's visibility from the streetscape raised concerns about its bulk and scale. Council's Landscape Officer provided the following comment:

"Pittwater DCP control D2.1 Character as viewed from a public place; as the proposed secondary dwelling is prominent to the streetscape that is unable to be softened to reduce the bulk and scale, and the proposal alters the existing character of the locality as presented to the streetscape."

To address these concerns, multiple iterations of Landscape Plans were submitted, aiming to maximise screening of the dwelling and associated works. However, compliance with the 'Planning for Bushfire Protection' (PBP) guidelines posed limitations on the extent of vegetative screening. The guidelines required the establishment of an Asset Protection Zone (APZ), which necessitates the following:

1. *Minimal fuel conditions, mitigating direct flame contact and radiant heat impacts.*
2. *Less than 15% canopy cover (at maturity) within the "Extent of Works" area.*
3. *Trees (at maturity) do not touch or overhang the building, and lower limbs are removed up to 2 meters above ground level.*
4. *Adequate canopy separation (2–5 meters), with smooth-barked and evergreen tree species preferred.*
5. *Vegetation gaps slow the progress of bushfires toward the building.*

6. *Shrubs are not under trees, are restricted to less than 10% ground cover, and are positioned at least twice their height away from exposed windows and doors.*

The applicant has complied with these requirements, ensuring that the landscape plan integrates the maximum possible level of screening permitted under bushfire protection standards. A Bushfire Consultant has certified the plan's compliance with the APZ requirements outlined in Appendix 4 of *Planning for Bushfire Protection 2019*.

Despite the challenges imposed by bushfire protection constraints, the landscaping provided achieves the best possible screening outcome for the secondary dwelling and is considered sufficient to reduce its visual prominence from the streetscape.

It is required that the proposal meets the below outcomes. In this regard, the proposal is assessed in accordance with the below outcomes.

Merit Consideration

Further consideration of the non-compliance will be given in accordance with the outcomes of the control, as below.

- *To achieve the desired future character of the Locality.*

Comment:

The proposal incorporates measures to align with the desired future character by balancing built form with landscaping and minimising ecological impacts.

- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)*

Comment:

The development has been designed to minimise intrusion on the natural environment, with reduced hardstand size and integration of landscaping to soften visual impact.

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

Comment:

The hardstand and landscaping have been designed to respect the existing streetscape, ensuring the built form does not overwhelm the natural setting.

- *The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)*

Comment:

While constraints related to bushfire protection limited vegetative screening, the applicant has maximised landscaping within these constraints, ensuring the built form is visually softened.

- *High quality buildings designed and built for the natural context and any natural hazards. (En, S)*

Comment:

The proposal is consistent with bushfire protection standards, demonstrating high-quality design that accounts for site-specific hazards.

- *Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)*

Comment:

The secondary dwelling and hardstand area maintain a modest scale and are screened to reduce their streetscape prominence.

- *To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.*

Comment:

The design minimises impacts on local views by keeping the hardstand area compact and integrating landscaping.

- *To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.*

Comment:

The proposed landscaping supports the bushland vista, ensuring the built form remains a secondary feature.

- *To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)*

Comment:

The development complements the landscape character by minimising hardstand size, enhancing landscaping, and maintaining visual harmony with adjacent public domain elements.

Based on the above, the proposed development is consistent with the outcomes of the control and the non-compliance is supported on merit.

D2.5 Front building line

Detailed description of non-compliance

Clause D2.5 Front Building Line (Pittwater 21 Development Control Plan) requires that built structures are setback a minimum 30m from the front boundary line on land zoned R5 Large Lot Residential adjoining McCarrs Creek Road.

The proposal details a retaining wall, a hardstand parking area and a secondary dwelling within the front setback.

The proposal presents a 0.3m setback, causing a 99% variation.

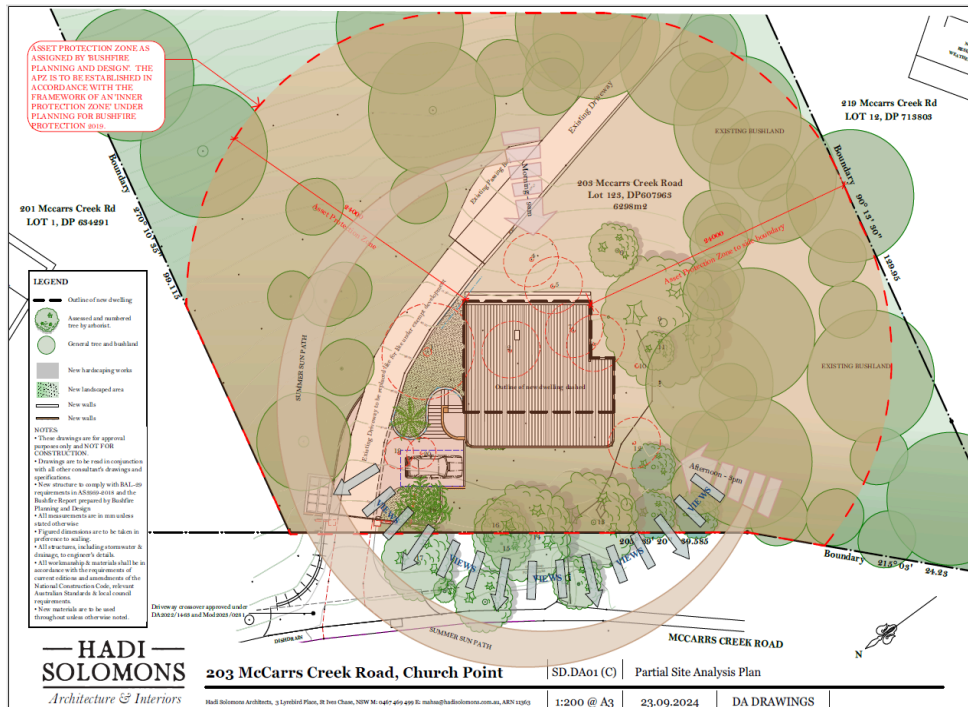


Figure 1: Partial Site Analysis Plan

The proposed variation to the front building line control directly responds to the site's specific constraints, prioritising compliance with Planning for Bushfire Protection 2019 (PBP) while minimising environmental impacts. The Bushfire Hazard Assessment by Bushfire Planning & Design confirms that an Asset Protection Zone (APZ) of 24m is required to the east and southeast in the proposed location to mitigate bushfire risks and achieve a BAL-29 rating.

Clarke Dowdle & Associates' Report 1 evaluates alternative locations for the secondary dwelling to achieve compliance with this clause. Specifically, relocating the dwelling to the eastern portion of the site was considered, but this would require an APZ of 73m to meet BAL-29 criteria. Additionally, predicted flame lengths exceeding 108m would necessitate a performance solution to address the increased bushfire risk. By contrast, the originally proposed location nearer McCarrs Creek Road offers superior compliance with PBP and a safer outcome. Furthermore, Clarke Dowdle & Associates' Report 2 confirms that the landscape plan (L-01, Revision G) meets APZ requirements.

Retaining the secondary dwelling in its original location allows for effective APZ implementation while preserving more vegetation, minimising site disturbance, and ensuring accessibility for emergency response vehicles.

Strict compliance with the 30m front setback requirement is either unachievable due to bushfire constraints or would lead to unnecessary and unreasonable environmental impacts, including greater tree loss and increased land modification. The proposed siting strikes a balance between bushfire safety, environmental preservation, and functional site access, aligning with the objectives of the clause while maintaining a reasonable and justified planning outcome.

An assessment against the objectives of the clause is provided below.

Merit consideration

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

- *Achieve the desired future character of the Locality.*

Comment:

The amended proposal aligns with the desired future character statement of the Bayview Heights Locality.

- *Equitable preservation of views and vistas to and/or from public/private places. (S)*

Comment:

The development will not result in any unreasonable view loss impacts from surrounding/adjacent properties or from the public domain.

- *The amenity of residential development adjoining a main road is maintained. (S)*

Comment:

The site does not adjoin a main road, therefore no further assessment is required.

- *Vegetation is retained and enhanced to visually reduce the built form. (En)*

Comment:

The landscape plan and applied conditions of consent have been included that will ensure the maintenance and protection of existing vegetation, and will require the owners to provide sufficient planting within the front setback.

- *Vehicle manoeuvring in a forward direction is facilitated. (S)*

Comment:

Vehicle maneuvering in a forward direction is not facilitated within the front setback. However, this is not proposed to change by the application, and aligns with adjacent and surrounding sites.

- *To preserve and enhance the rural and bushland character of the locality. (En, S)*

Comment:

The proposal is considered to preserve and enhance the rural and bushland character of the locality.

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

Comment:

The amended proposal is not considered to adversely impact the existing streetscape. The scale and density is considered to maintain the character of the existing and desired streetscape character within the Bayview Heights Locality. The proposal keeps with the height of the natural environment.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment:

The development is considered to encourage attractive street frontages. The amended proposal has significantly reduced the visual impact of works within the front setback area. In this regard, it is considered that the proposal, as amended, fulfils this objective.

- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*

Comment:

The proposed development is considered to respond to, reinforce and sensitively relate to the spatial characteristics of the urban environment. Amended plans have significantly reduced the extent of built form to create development that responds adequately to the existing urban environment.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of \$2,250 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$225,000.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for a secondary dwelling has been referred to the Development Determination Panel (DDP) due to the receipt of five (5) or more objections.

The concerns raised in the objections have been addressed within the submission section of this report.

The critical assessment issues include variations to *Clause C1.23 Eaves*, *Clause D2.1 Character as viewed from a public place*, and *Clause D2.5 Front building line*, as well as concerns outlined in Council's Landscape Referral. These matters are discussed in detail within this report.

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 DA2023/1853 for Construction of a secondary dwelling on land at Lot 123 DP 607963, 203 McCarrs Creek Road, CHURCH POINT, 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
SD.DA00	B	Site Plan and Drawing Schedule	Hadi Solomons Architecture & Interiors	23 September 2024
SD.DA02	C	Proposed Parking Plan	Hadi Solomons Architecture & Interiors	23 September 2024
SD.DA03	A	Proposed Ground Floor Plan	Hadi Solomons Architecture & Interiors	23 September 2024
SD.DA04	A	Proposed Roof Plan	Hadi Solomons Architecture & Interiors	23 September 2024
SD.DA05	A	North East Elevation	Hadi Solomons Architecture & Interiors	23 September 2024
SD.DA06	B	North West Elevation	Hadi Solomons Architecture & Interiors	23 September 2024
SD.DA07	A	South West Elevation	Hadi Solomons Architecture & Interiors	23 September 2024
SD.DA09	B	Section AA	Hadi Solomons Architecture & Interiors	23 September 2024
SD.DA10	A	Section BB	Hadi Solomons Architecture & Interiors	23 September 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	-	-	-
BASIX Certificate	1396826S	Ziba Design and construction	10 October 2023
Geotechnical Report	-	Ascent Geo	23 October 2023

Landscape Plan- Drawing Number L01- Revision G	-	Space Landscape Designs	6 December 2024
Bushfire Hazard Assessment	-	Bushfire Planning & Design	26 October 2023

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	undated
Aboriginal Heritage Office	AHO Referral Response	undated
Roads and Maritime Service	RMS Referral Response	14 February 2024

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

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

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work

relates (not being the Council) has given the Council written notice of the following information:

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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.
- (c) At all times after the submission 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) 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.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) 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.
- (k) 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.

- (l) 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.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) 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 \$2,250.00 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 \$225,000.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

8. **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 VDM Consulting Engineers, job number 2207-10osd, dated 11.07.2024. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by AscentGeo Geotechnical Consulting dated 23.10.2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Off Street Parking Design**

The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

11. **Boundary Identification Survey**

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

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

Details demonstrating compliance are to be submitted to the 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.

12. **Construction Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to Council via an application for a Permit to Implement Traffic Control. The application form can be accessed via <https://www.northernbeaches.nsw.gov.au/council/forms>. Approval of the permit application by the Northern Beaches Council Traffic Team is required prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
 - Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.
 - Demonstrate that direct access from a public space/road is not viable for each stage of works.
 - An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.
 - Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
 - No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
 - How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
 - If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.
 - A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private

road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.

- A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
 - Compare the post-construction report with the pre-construction report,
 - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
 - Should any damage have occurred, identify remediation actions taken.
 - Be submitted to Council with the Occupation Certificate.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- Proposed protection for Council and adjoining properties.
- The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

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

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

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

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

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

14. **Compliance with Standards**

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

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

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

15. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. Tree Removal Within the Property

This consent approves the removal of existing prescribed trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) trees 2, 3, 4, 5, 7 and 8,
- 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.

DURING BUILDING WORK

17. Tree and Vegetation Protection

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

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

18. **Pre-clearance Survey**

Any habitat for native wildlife (including tree hollows) approved for removal is to be inspected for native wildlife prior to its removal. If native wildlife is found within habitat to be removed, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be provided to the Principal Certifier prior to any Occupation Certificate.

Reason: To protect native wildlife.

19. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

20. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

21. **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.

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

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

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

23. **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.

24. **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.

25. **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.

26. **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.

27. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal

Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Planning, Housing and Infrastructure.

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the Department of Planning, Housing and Infrastructure.

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

28. Landscape Completion

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

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans, unless otherwise imposed by conditions,
- c) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- d) where the property is certified Bush Fire Prone Land, any planting may be managed in accordance with Planning for Bushfire Protection 2019.

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

Reason: Environmental amenity.

29. Native Landscaping

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

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

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

30. No Weeds Imported On To The Site

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental

weeds.

31. **Priority Weed Removal and Management**

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

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

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

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. **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.

34. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

35. **Certification of Off Street Parking Works**

The Applicant shall submit a certificate from a suitably qualified person certifying that the parking facility was constructed in accordance within this development consent and the

relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

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

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

37. **Landscape Maintenance**

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

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

Reason: To maintain local environmental amenity.

38. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

39. **Maintenance of Asset Protection Zones**

Vegetation clearing for ongoing APZ maintenance must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Reason: To protect native vegetation and wildlife.

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

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

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

Reason: To protect native wildlife and habitat.

41. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

DRAWING REGISTER

Drawing No.	Drawing Name	Date
SD.DA00 (B)	Site Plan & Drawing Schedule	23.09.2024
SD.DA01 (C)	Partial Site Analysis Plan	23.09.2024
SD.DA02 (C)	Proposed Garage Floor Plan	23.09.2024
SD.DA03 (A)	Proposed Ground Floor Plan	23.09.2024
SD.DA04 (A)	Proposed Roof Plan	23.09.2024
SD.DA05 (A)	North East Elevation	23.09.2024
SD.DA06 (B)	North West Elevation	23.09.2024
SD.DA07 (A)	South West Elevation	23.09.2024
SD.DA08	South East Elevation	20.10.2023
SD.DA09 (B)	Section AA	23.09.2024
SD.DA10 (A)	Section BB	23.09.2024
SD.DA11	Winter Solar Studies - 21 June	20.10.2023
SD.DA12	BASIX Certificate pages 1-4	20.10.2023
SD.DA13	BASIX Certificate pages 5-9	20.10.2023
SD.DA14 (A)	Floor Area Calculations	01.07.2024
SD.DA15 (A)	Landscaping Calculations	23.09.2024
SD.DA16	Whole Site Analysis	04.06.2024

New works highlighted in pink



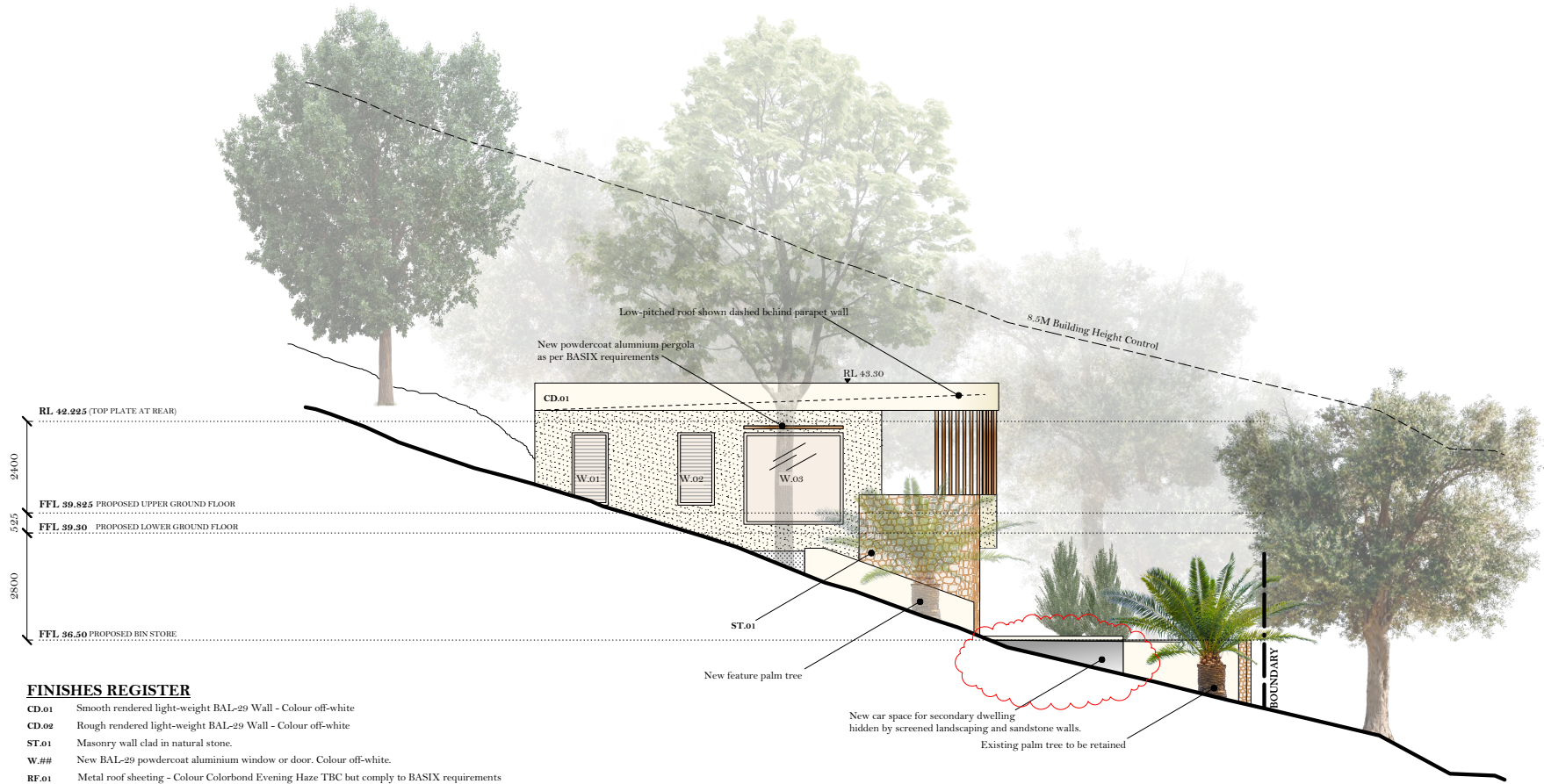
HADI SOLOMONS
Architecture & Interiors

203 McCarrs Creek Road, Church Point

SD.DA00(B) | Site Plan and Drawing Schedule

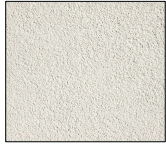
Hadi Solomons Architects, 3 Lyrebird Place, St Ives Chase, NSW M: 0467 469 499 E: mahsa@hadisolomons.com.au, ARN 11363

1:500 @ A3 | 23.09.2024 | DA DRAWINGS



FINISHES REGISTER

CD.01	Smooth rendered light-weight BAL-29 Wall - Colour off-white
CD.02	Rough rendered light-weight BAL-29 Wall - Colour off-white
ST.01	Masonry wall clad in natural stone.
W.##	New BAL-29 powdercoat aluminium window or door. Colour off-white.
RF.01	Metal roof sheeting - Colour Colorbond Evening Haze TBC but comply to BASIX requirements
AB.01	Timber-look aluminium battens - Colour TBC
BL.01	New frameless glass balustrade.



CD.01



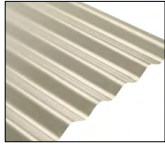
CD.02



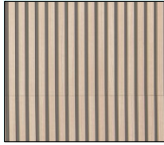
ST.01



W.##



RF.01



AB.01

NOTES:

- These drawings are for approval purposes only and NOT FOR CONSTRUCTION.
- These drawings are to be read in conjunction with all other consultant's drawings and specifications.
- All measurements are in mm unless stated otherwise
- All structures, including stormwater & drainage, to engineer's details.
- Figured dimensions are to be taken in preference to scaling.
- BAL-29 Rating to apply to all elevations and roof elements. Compliance as per Bushfire Consultant report

HADI SOLOMONS
Architecture & Interiors

203 McCarrs Creek Road, Church Point

|SD.DA05 (A)|

North East Elevation

Hadi Solomons Architects, 3 Lyrebird Place, St Ives Chase, NSW M: 0467 469 499 E: mahsa@hadisolomons.com.au, ARN 11363

|1:100 @ A3|

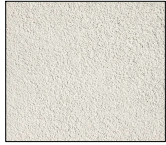
|23.09.2024|

|DA DRAWINGS|



FINISHES REGISTER

- CD.01 Smooth rendered light-weight BAL-29 Wall - Colour off-white
CD.02 Rough rendered light-weight BAL-29 Wall - Colour off-white
ST.01 Masonry wall clad in natural stone.
W.## New BAL-29 powdercoat aluminium window or door. Colour off-white.
RF.01 Metal roof sheeting - Colour Colorbond Evening Haze TBC but comply to BASIX requirements
AB.01 Timber-look aluminium battens - Colour TBC
BL.01 New frameless glass balustrade.



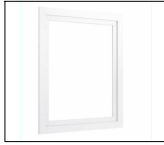
CD.01



CD.02



ST.01



W.##



RF.01



AB.01

- NOTES:
- These drawings are for approval purposes only and NOT FOR CONSTRUCTION.
 - These drawings are to be read in conjunction with all other consultant's drawings and specifications.
 - All measurements are in mm unless stated otherwise
 - All structures, including stormwater & drainage, to engineer's details.
 - Figured dimensions are to be taken in preference to scaling.
 - BAL-29 Rating to apply to all elevations and roof elements. Compliance as per Bushfire Consultant report

HADI SOLOMONS
Architecture & Interiors

203 McCarrs Creek Road, Church Point

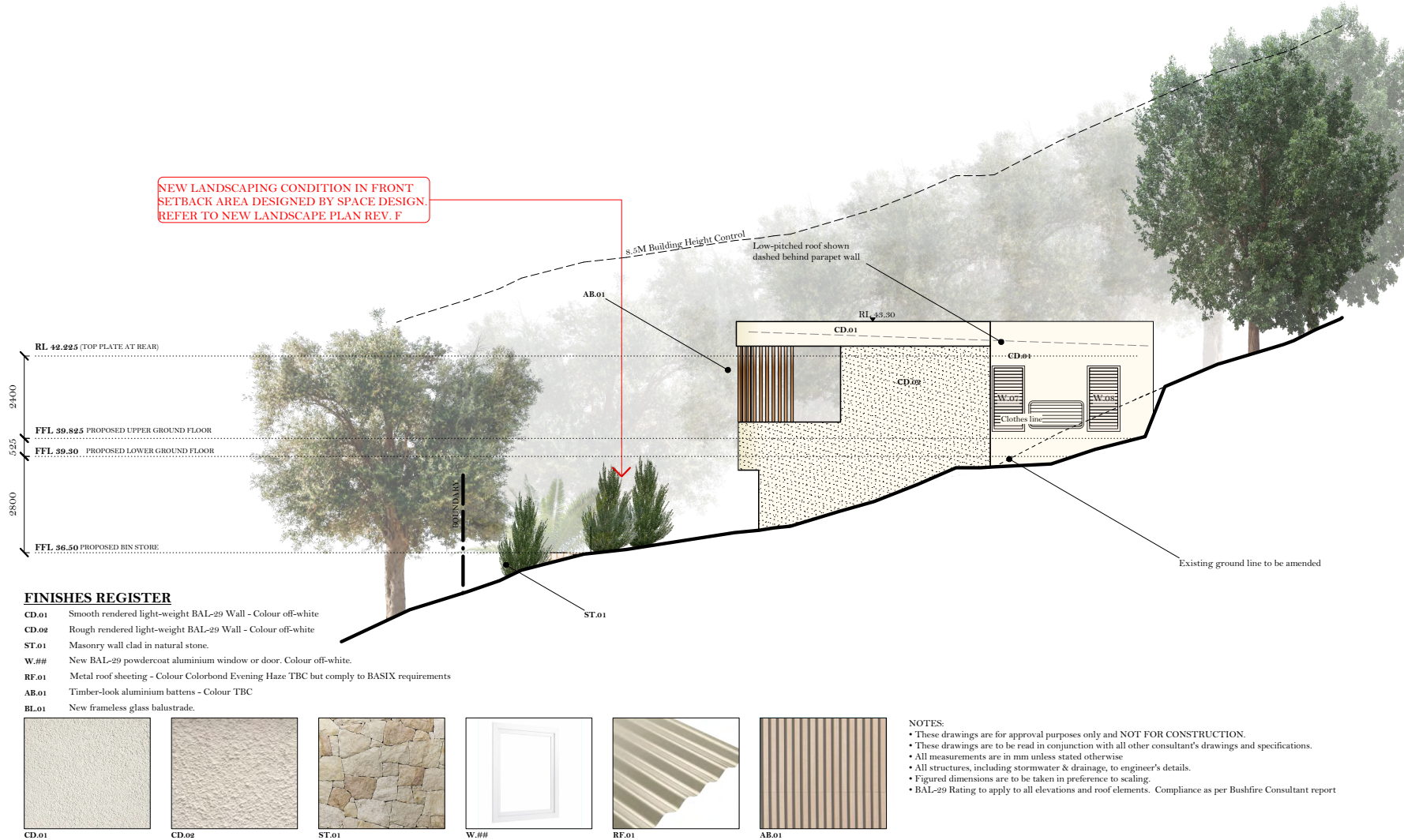
SD.DA06 (B) | North West Elevation

Hadi Solomons Architects, 3 Lyrebird Place, St Ives Chase, NSW M: 0467 469 499 E: mahsa@hadisolomons.com.au, ARN 11363

1:100 @ A3

23.09.2024

DA DRAWINGS



NOTES:

- These drawings are for approval purposes only and NOT FOR CONSTRUCTION.
- These drawings are to be read in conjunction with all other consultant's drawings and specifications.
- All measurements are in mm unless stated otherwise
- All structures, including stormwater & drainage, to engineer's details.
- Figured dimensions are to be taken in preference to scaling.
- BAL-29 Rating to apply to all elevations and roof elements. Compliance as per Bushfire Consultant report

— HADI —
SOLOMONS
Architecture & Interiors

203 McCarrs Creek Road, Church Point

| SD.DA07 (A) |

South West Elevation

Hadi Solomons Architects, 3 Lyrebird Place, St Ives Chase, NSW M: 0467 469 499 E: mahsa@hadisolomons.com.au, ARN 11363

| 1:100 @ A3 |

| 23.09.2024 |

| DA DRAWINGS |

ITEM 3.4	DA2024/1703 - 37 OSBORNE ROAD, MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
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PURPOSE

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

RECOMMENDATION

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That Council as the consent authority **approves** Development Consent to DA2024/1703 for alterations and additions to a dwelling house on land at Lot 18 DP 5236, 37 Osborne Road, Manly, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2025/192934
Attachments	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1703
Responsible Officer:	Lachlan Rose
Land to be developed (Address):	Lot 18 DP 5236, 37 Osborne Road MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Robyn Elizabeth Lowe
Application Lodged:	13/12/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/01/2025 to 27/01/2025
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.4 Floor space ratio: 11.53%
Recommendation:	Approval
Estimated Cost of Works:	\$ 514,947.01

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 a Clause 4.6 variation greater than 10% to the Floor Space Ratio under the Manly Local Environment Plan 2013.

Concerns raised in the objections predominantly relate to heritage conservation, privacy and setback/ boundary envelope. It should be noted that a submission was received in support from the immediate neighbour at 39 Osbourne Road.

Critical assessment issues included floor space ratio, privacy, setbacks and total open space.

The 4.6 request for the non-compliance with FSR standard arises from a 8.83m² increase in floorspace. The existing dwelling has a floor space ratio which is 8.14% above compliance with the LEP. The proposal increases this to a 11.53% variation. The additional floorspace does not increase the bulk or scale of the building.

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

PROPOSED DEVELOPMENT IN DETAIL

The development has been described as alterations and additions to a dwelling house.

The proposal includes:

Demolition Works

- Demolition works to the rear and front of the dwelling and internal alterations.

Lower Ground Floor

- Reconfigured front entrance

Ground Floor

- Refurbishment of existing sunroom with new masonry walls and glazing to replace existing
- 2nd Living
- Master bed with ensuite
- Bed 2 (existing)
- Bed 3
- Bed 4/Office (existing)
- Bath
- Laundry
- Open living and dining
- Kitchen with pantry

External Works

- Awning above front entrance
- Covered alfresco with BBQ area
- Reconstruction of planter box in existing location and extension around northern side boundary
- New reconfigured roof structure

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.

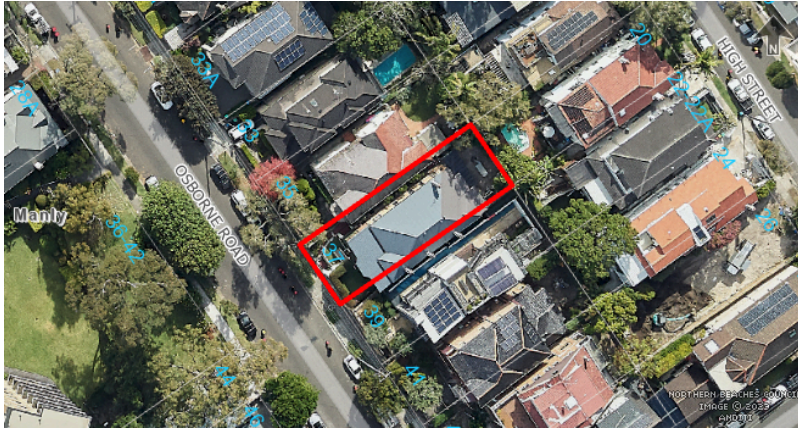
SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R1 General Residential
 Manly Local Environmental Plan 2013 - 4.3 Height of buildings
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 18 DP 5236 , 37 Osborne Road MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the north-eastern side of Osbourne Road, Manly. The site is regular in shape with a frontage of 12.190m along Osbourne Road and a depth of 35.4m. The site has a surveyed area of 431.6m². The site is located within the R1 General Residential zone and accommodates a part one and two storey brick dwelling house with a sandstone garage. The site has an average gradient of 10 degrees and has a western sloping aspect. The site includes landscaped areas of lawn area, shrubs and hedging. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential development including dwelling houses and residential flat buildings.

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.

APPLICATION HISTORY

Following a preliminary assessment of the application and site inspection of the subject site and adjoining properties, Council wrote to the applicant on 10 February 2025 outlining concerns that would not allow for Council to support the application in its current form. The concerns related to Council's Development Engineering Referral Response and privacy concerns from W9 and W10. The applicant lodged amended plans on 27 February 2025 to address the concerns raised.

The amended plans incorporate the following changes:

- Amended stormwater plans to address the Development Engineers concerns
- Amended architectural plans to include fluted glass to 1.5m from the proposed floor level to W9 and W10.

The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space than the original proposal. The amended plans result in adequate privacy mitigation from W9 and W10 with the inclusion of fluted glazing to 1.5m from floor level. Therefore, re-notification was not required in accordance with Northern Beaches Community Participation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
	<u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 13/01/2025 to 27/01/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Ms Judith Ellen Levine	39 Osborne Road MANLY NSW 2095
Ms Bronwyn Joy Pierce	20 High Street MANLY NSW 2095
Helen Meredith Wheelhouse	35 Osborne Road MANLY NSW 2095

The following issues were raised in the submissions:

- Heritage Conservation
- Privacy
- Encroachment into the setback from the roof and downpipe
- Rear setback
- Submission in support

The above issues are addressed as follows:

- **Heritage Conservation**

The submissions raised concerns that the proposal will not retain the preserve the heritage significance of the dwelling including the tin ceiling, lead lights and chimneys.

Comment:

Council's Heritage Officer has provided a referral response (See the Referrals subheading of this report for detail) stating that there are no objections are raised on heritage grounds, subject to three conditions. Specifically, the heritage referral states:

The retention of the fire place and the ornamental ceiling in the existing family room would be recommended, however, the reconfiguration of the internal layout may require the removal of the fire places, but the chimneys can be retained as they are considered to contribute to the heritage values of the Federation dwelling. The extension and the reconfiguration of the roof at the rear is considered acceptable as this portion will not be visible from the street.

The three conditions of consent include 'Photographic Archival Record', 'Retention of chimneys' and 'Protection of stone kerb along Osborne Road'.

Subject to the Heritage Officers referral and the three abovementioned conditions, the concern **does not** warrant a reason for refusal.

- **Privacy**

The submissions raised concerns of privacy and overlooking from the new windows of W09, W10 and W11 into the north-eastern neighbour (35 Osbourne Road). The concerns address the potential for overlooking into the neighbouring outdoor dining area and kitchen.

Comment:

W11 is located to the rear of the property and is not considered to overlook or cause unreasonable privacy impacts to the neighbouring dwelling at 35 Osbourne Road.

W09 is primarily located to the kitchen area of the neighbouring dwelling, where the CDC plans (CDC/3517612) reflect a high sill design to the kitchen. It is noted that there is a difference in floor level of 1.88m from the subject ground floor dining and living area of W09 to the neighbouring dwelling kitchen area. This variation in floor level arises from the topography of the dwelling allotments along Osbourne Road. With consideration to the above, W09 and W10 has been amended to include fluted glazing to 1.5m from floor level to reduce the potential for privacy and overlooking impacts. See Clause 3.4.2 *Privacy and Security* for a detailed assessment.

It should be noted that the proposal will comply with the side setback requirement to the northwest and the proposal is considered to not result in unreasonable privacy impacts.

With consideration to the above, the concern **does not** result in a reason for refusal.

- **Encroachment into the setback from the roof and down pipe**

The submissions raised concerns that the proposed development will encroach into the 0.9m setback requirement under the DCP from the roof, stormwater pipe and entry porch roof.

Comment:

See Control 4.1.4 Setbacks of this report for a detailed assessment. It should be noted that the proposed development maintains the existing roof form to the front of the dwelling house. The development complies with Control 4.1.2.1 Wall Height and is considered to not result in unreasonable impacts. The proposal is considered to comply with the objectives under Control 4.1.4 Setbacks, whereby the development will result in an encroachment in the setback requirement to the entrance awning to the north and the sunroom to the south. The development maintains the existing non-compliant setback to the southern boundary with no further unreasonable impacts.

There may be a misunderstanding with the setback requirements whereby, the concern addressed a 900mm setback requirement. This application is subject to Manly DCP where the setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.

With regards to the detailed assessment under Control 4.1.4 Setbacks, the concern **does not** result in a reason for refusal.

- **Rear setback**

The submissions raised concerns that the development does not comply with the rear setback requirement.

Comment:

See Control 4.1.4 Setbacks of this report for a detailed assessment. The merit assessment against the control concludes that the proposal will comply with the objectives and is considered satisfactory with regards to the existing built form and minimal impacts. This concern **is not** a reason for refusal.

• **Submission in support**

A submission was received from the adjoining property directly to the south-east (39 Osbourne Road) in support of the proposed development.

Comment:

The submission acknowledges significant the retention of the external fabric of the house, maintaining the heritage look and value. Stating that the he house does need some modernisation to make it appropriate for comfort in accordance with today's needs and aesthetic preferences. The owners mention that they are pleased that this renovation will not reduce the amenity of their home or put the infrastructure at any risk of damage, with the small change to the footprint being appropriate to modernise the house.

REFERRALS

Internal Referral Body	Comments																																																
NECC (Bushland and Biodiversity)	The subject site is located within declared habitat for the endangered population of Long-nosed Bandicoots at North Head. As such, a threatened species 'test of significance' is required to be undertaken in accordance with Section 7.3 of NSW Biodiversity Conservation Act 2016. This assessment has been undertaken and concludes that the proposal will not result in a significant impact to the endangered population, given that proposed works are largely within the existing development footprint.																																																
NECC (Development Engineering)	The proposed development is in Zone 1 of Region 3. Vehicle crossing construction is not proposed. A geotechnical report has been provided. The stormwater management plans have not adequately addressed the on-site detention requirement of the site. On-site detention is required in accordance with Section 9.3.3.2 Requirements for Region 3 – Zone 1 – On-Site Detention of Council's Water Management for Development Policy. Engineering Comments 04.03.25 Amended stormwater management plans have been provided which address the on-site detention requirements. Development engineering raises no objections to the proposed development, subject to conditions.																																																
Strategic and Place Planning (Heritage Officer)	<table><tr><th colspan="3">HERITAGE COMMENTS</th></tr><tr><th colspan="3">Discussion of reason for referral</th></tr><tr><td colspan="3">The proposal has been referred to Heritage as the subject property is within the vicinity of a heritage item:</td></tr><tr><td colspan="3">Item I2 - All stone kerbs - Along Osborne Road</td></tr><tr><th colspan="3">Details of heritage items affected</th></tr><tr><td colspan="3">Details of the item in the vicinity, as contained within the Heritage Inventory, are:</td></tr><tr><td colspan="3">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.</td></tr><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr><tr><th colspan="3">Consideration of Application</th></tr><tr><td colspan="3">The proposal seeks consent for alterations and additions to the existing Federation period building built in the early 1900s. The proposed works include the demolition of the rear eastern wall and some internal walls to extend the building to the rear involving the removal of two fire places and two chimneys. From a heritage perspective, the retention of the fire place and the ornamental ceiling in the existing family room would be recommended, however, the reconfiguration of the internal layout may require the removal of the fire places, but the chimneys can be retained as they are considered to contribute to the heritage values of the Federation dwelling. The extension and the reconfiguration of the roof at the rear is considered</td></tr></table>	HERITAGE COMMENTS			Discussion of reason for referral			The proposal has been referred to Heritage as the subject property is within the vicinity of a heritage item:			Item I2 - All stone kerbs - Along Osborne Road			Details of heritage items affected			Details of the item in the vicinity, as contained within the Heritage Inventory, are:			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 the existing Federation period building built in the early 1900s. The proposed works include the demolition of the rear eastern wall and some internal walls to extend the building to the rear involving the removal of two fire places and two chimneys. From a heritage perspective, the retention of the fire place and the ornamental ceiling in the existing family room would be recommended, however, the reconfiguration of the internal layout may require the removal of the fire places, but the chimneys can be retained as they are considered to contribute to the heritage values of the Federation dwelling. The extension and the reconfiguration of the roof at the rear is considered		
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Internal Referral Body	Comments
	acceptable as this portion will not be visible from the street. The proposed works include a small extension with sandstone cladding and addition of an awning adjacent to this extension, at the lower ground floor, to provide a proper entry to the property. The proposal also involves the refurbishment of the existing sunroom at the front, replacing the existing shingle clad walls with new masonry walls with shingle cladding finish to match existing and also replacing the existing windows with new windows that each window consists of double hung panes and fixed glazing in the middle. The proposed materials and finishes are considered appropriate for the heritage values of the property. Given the proposed works generally respect the original building and are sympathetic to the character of the streetscape and do not involve any works to the existing driveway cross-over, there will be no adverse impact upon the significance of the heritage item or the streetscape. However, given the potential significance of the existing property an archival record is required. Therefore, no objections are raised on heritage grounds, subject to three conditions. <u>Consider against the provisions of CL5.10 of MLEP 2013:</u> Is a Conservation Management Plan (CMP) required? No 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. A1766686 dated 30 September 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.9m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (258.96sqm)	FSR: 0.67:1 (288.83sqm)	11.53%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R1 General Residential

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

The underlying objectives of the R1 General Residential zone:

- To provide for the housing needs of the community.

Comment:

The 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 dwelling house and therefore, will enable the day to day needs of residents.

It is considered that the development satisfies this objective.

4.3 Height of buildings

It is noted that there is an existing non-compliant building height from the existing ground level of the lower ground floor to the maximum roof height. Although, this existing non-compliance is not to be altered under this application and the proposed development results in a maximum building height of 7.9m. Therefore, the proposed development will comply with the maximum building height of Clause 4.3.

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 dwelling house including an extension to the rear with alterations to the front and internal dwelling. 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 dwelling house and the alterations and additions. 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: 0.67:1

Percentage of variation: 11.53%

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 objectives of Clause 4.4 are achieved
- The development remains consistent with the locality
- There is a precedence within the immediate locality
- The proposed variation for this application is minor and relates to creating a functional and usable private open space
- The building by virtue of its height, bulk and scale, is consistent with the desired 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:

"Context

- *The area surrounding the subject site is characterised by 2 and 3 storey residential dwellings, stepped to accommodate the sloping topography.*
- *The proposed dwelling has been designed to remain consistent with the character of the locality, despite the variation to FSR, through design, architectural features and complimentary materials and colour choices.*
- *The proposal has been designed as alterations and additions with the main addition relating to the rear of the site which increases GFA but provides an integrated space between the dwelling and private open space of the site.*
- *Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:*
 - *DA2024/1351 – 35 Osborne Road, Manly – 0.656:1 – 9.36% (corrected) 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 that integrate with the main private space area for the site.
- *This represents an efficient use of an existing developed site, with all services readily available.*
- *The built form proposed is relatively consistent with the existing dwelling and other buildings in the locality,*
- *The minor increase to the floor area of 8.78sqm is considered reasonable as it is located as a minor extension to the rear of the property 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).*

Existing Floor Space

- *It's acknowledged that if the storage area under the dwelling was not included, the proposal would comply with Clause 4.4. The variation is the basis of existing unusable floor space which gets included due to the definition of GFA. Noting the impracticality of that space, the minor increase for usable components of the dwelling can and should be supported*

The applicant's Clause 4.6 Request is generally supported. It is noted that the site currently results in a variation to the development standard and this application is subject to additional works which will not significantly impact the bulk and scale of the existing site. 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. The applicant's 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 the character of 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 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.

6.5 Terrestrial biodiversity

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

- (a) *protecting native fauna and flora, and*
- (b) *protecting the ecological processes necessary for their continued existence, and*
- (c) *encouraging the conservation and recovery of native fauna and flora and their habitats.*

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

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

Comment:

The application was referred to Council's Bushland & Biodiversity team, who are supportive of the proposed works, subject to recommended conditions of consent. The development will not have adverse impact on the matters above and appropriate measures have been taken to avoid, minimise and mitigate the impacts of the development.

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

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

Comment:

The application was referred to Council's Bushland & Biodiversity team, who are supportive of the proposed works, subject to recommended conditions of consent. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.

6.9 Foreshore scenic protection area

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

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

Comment:

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 431.6sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 7.3m (based on gradient 1:7.5)	6m	N/A	Yes
	S: 7.1m (based on gradient 1:10)	5.3m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	3.2m	28% (0.7m)	No
	Pitch: maximum 35 degrees	32 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Nil/ 0m (garage) 4.7m (sunroom) 5.8m (patio) ,consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 1.87m (NW) 1.13m- 1.4m (NE) 1.26m (alfresco) 0.9m (entrance awning) (based on wall height)	1.9m 2m 2m 0.3m	N/A N/A N/A 67% (0.6m)	Yes Yes Yes No
	S: 1.76m (SW) 1.1m-1.17m (SE) 0.97m (alfresco) (based on wall height)	0.4m 0.4m 0.9m	77.3% (1.36m) Max 65.8% (0.77m) 7.2% (0.07m)	No No No
	Windows: 3m	N: 4 windows at 1.9m-2m S: 1 window at 0.4m	37% (1.1m) 87% (2.6m)	No
4.1.4.4 Rear Setbacks	8m	1m (planter box) 3.7m (pergola) 6.8m (dwelling)	87.5% (7m) (existing) 53.7% (4.3m) 15% (1.2m)	No No No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (237.38sqm) of site area	39.6% (171.1sqm)	27.9% (66.28sqm)	No
	Open space above ground 25% of total open space	21.5% (36.7sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (59.885sqm) of open space	41.02% (70.2sqm)	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.8m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 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	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.4.2 Awning supported from the ground	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of non-compliance

Following a preliminary assessment of the application, submissions raised and a site inspection of the subject site and adjoining properties, Council wrote to the applicant on 10 February 2025 outlining concerns that would not allow for Council to support the application in its current form. These concerns addressed the proposed W9 and W10, requiring amendments to the windows to reduce the potential for privacy concerns to arise.

The applicant submitted amended plans on 27 February 2025, addressing the windows through fluted glass to 1.5m from the proposed floor level. It is considered that these amendments are satisfactory to mitigate privacy concerns and the proposal does not result in unreasonable privacy impacts.

Merit consideration:

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

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

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

Comment:

The development is considered to comply with the setback requirement to the proposed windows on the northern elevation, with the exception of the entrance awning. The amendments to windows W9 and W10 include 1.5m fluted glazing which is considered to adequately reduce the potential to overlook into the adjoining property to the north. Additionally, the dining and kitchen window and rear outdoor area to the property to the north is located at 3m from the proposed dwelling windows. Windows W9 and W10 are located to the subject living and dining area where it is expected that the occupants will primarily be located in a seated position, and the 1.5m fluted glazing will help to mitigate concerns of overlooking down to the northern property. Therefore, the proposal satisfies the setback requirements to the northern boundary, with the exemption of the entrance awning, appropriately separating the dwelling house and mitigating direct viewing between windows and/or outdoor living areas.

There are minimal changes to the southern elevation with no privacy concerns. The proposal is considered to comply with objective 1 above.

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

Comment:

The proposal will provide privacy to the adjoining properties while allowing access to light and air. The amendments to W9 and W10 allow for adequate lighting to the living and dining area above the fluted 1.5m glazing. The development will balance outlook and views from habitable rooms and private open space.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will encourage awareness of neighbourhood security through the re-conditioning of the existing windows to the sun room.

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

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

Description of non-compliance

Control 4.1.2.3 Roof Height states:

a) Pitched roof structures must be no higher than 2.5m above the actual wall height

The proposed rear roof structure will meet the existing roof height of 3.2m, resulting in a non-compliance to the control of 28% (0.7m).

The roof height is considered acceptable in this circumstance due to the heritage consideration of the existing roof and the proposed roof design which is proposed to compliment the existing size and orientation.

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 building heights are within the 8.5m height limit, with the roof forms being 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,

Comment:

The bulk and scale of the proposed dwelling is considered to be adequate with regards to the existing dwelling configuration and dwelling sizes along Osborne Road.

(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 non-compliance arises due to the proposed roof structure to maintain the existing roof form and height. The proposed roofed areas will not result in an increase in the maximum building height. Views are maintained from adjoining properties with no significant impacts to views.

(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 complies with the requirements for solar access and maintains reasonable sunlight 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 proposed development appropriately maintains existing vegetation and does not conflict with bushland and surrounding land uses.

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

4.1.3 Floor Space Ratio (FSR)

See clause 4.4. Floor Space Ratio for a detailed assessment.

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

Description of non-compliance

Control **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 nil front setback to the garage, 4.7m setback to the sunroom and 5.8m to the patio. As such, the prevailing building line at the front boundary is maintained and the proposal is compliant with this Control.

Control **4.1.4.2 Side Setbacks and Secondary Street Frontages** stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height. This control also stipulates that any additional windows must be setback 3.0 metres from boundaries.

Notwithstanding the northern entrance awning, the proposal complies with the northern setback requirements for the dwelling and alfresco area.

The following setbacks to the dwelling and alfresco are required and exhibited:

Northern elevation

- Entrance awning: 0.9m- required (based on wall height)- 0.3m exhibited- variation of 67% (0.6m)

Southern elevation

- **SW:** 1.76m required (based on wall height) -0.4m exhibited- variation of 77.3% (1.36m).
- **SE:** 1.1m- 1.17m required (based on wall height)- 0.4m exhibited- variation of max 65.8% (max 0.77m)
- **Alfresco:** 1.26m- required (based on wall height)- 0.9m exhibited- variation of 7.2% (0.07m)

The proposal results in the below non-compliant windows:

- 4 windows to the northern elevation at a 1.9m- 2m setback, resulting in a maximum variation of 37% (1.1m)
- 1 window to the southern elevation at a 0.4m setback, resulting in a variation of 87% (2.6m)

It should be noted that the proposed rear dwelling extension to each side setback will meet the existing dwelling non-compliance. The northern elevation includes a non-compliant entrance awning which results in a variation to the requirement. This awning is small in size and a lightweight open structure which will not result in significant impacts. The sunroom results in a minor increase to the side setback non-compliance of 0.3m and the rear alfresco side setbacks being maintained.

Control **4.1.4.4 Rear Setbacks** states:

a) The distance between any part of a building and the rear boundary must not be less than 8m.

The proposal results in the below rear setbacks:

- Planter box- 1m- 87.5% (7m) existing variation.
- Pergola- 3.7m- 53.7% (4.3m) variation

- Dwelling- 6.8m- 15% (1.2m) variation

The proposal results in a increase in the rear setback non-compliance to the dwelling and pergola. The planter box is located in the existing location.

Merit consideration:

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

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

Comment:

The proposed amendments to the streetscape are minor in nature and will not impact the existing desired spatial proportions of the street, the street edge and the landscape character of the street. Council's Heritage Officer has provided a referral response under the 'referrals' subheading of this report stating;

The proposed materials and finishes are considered appropriate for the heritage values of the property. Given the proposed works generally respect the original building and are sympathetic to the character of the streetscape and do not involve any works to the existing driveway cross-over, there will be no adverse impact upon the significance of the heritage item or the streetscape.

Therefore, the proposed development will sustain the existing streetscape character and heritage components.

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:

See Control 3.4.2 Privacy and Security for a detailed assessment. In summary, the proposed development has resulted in a reduction in privacy impacts from W9 and W10 to the adjoining property. The development is considered to not result in unreasonable privacy impacts and meets the objectives of Control 3.4.2. The proposal will maintain the majority of the existing roof with additional roofed area to the rear for the dwelling extension. 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 it has demonstrated compliance with the underlying objectives of controls where non-compliance arise. The non-compliance to the northern and southern setback is supported on merit as there is a minor increase from the existing to the sunroom, the dwelling house which maintains the existing setbacks and alfresco which is a lightweight and small design. The proposed development allows for flexibility in the siting of the dwelling, rear alfresco and northern porch roof, 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 significantly alter the landscaped areas and deep soil areas and is compliant with the landscaping requirements. The proposal will reinstate the existing rear planter box and not alter the existing front landscaped area. 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

The subject site is located within OS3 of the Open Space area map, which requires a total open space (TOS) area of 55% (237.38sqm) of the site area. The site requires a landscaped area of 35% (59.885sqm) of the total open space area and no more than 25% of TOS above ground.

The development results in a TOS of 39.6% (171.1sqm), a variation of the 27.9% (66.28sqm) to the requirement and a landscaped area of 41.02% (70.2sqm), complying with the requirement. Additionally, the TOS above ground is measured at 21.5% (36.7sqm) and complies with the requirement.

It should be noted that the development results in a minor reduction to the TOS due to the rear extension of the dwelling house from the existing covered alfresco area. The subject site results in an existing non-compliance to the TOS and the minor increase to the living and kitchen area results in the non-compliance by an additional 15sqm. The landscaped area is increased under this proposal due to the proposed landscaped planter areas to the rear of the site.

It is considered that the 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. The subject site will include sufficient landscaped areas and features to accommodate native flora and fauna.

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 primarily maintain the existing landscaped areas and 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. It should be noted that the subject site includes landscaped area to the front of the dwelling above the garage which is less than 1m in depth. This area is excluded from the landscaped area calculation as per the requirements. Although, if it was included in the calculation, the landscaped area would result in 60% (103.18sqm) and provide ample landscaping.

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 to the rear of the subject site. Minor additional overshadowing will occur to the adjoining property to the south to the top of the center roof area and rear of the site from 12pm to 3pm. The development will not result in unreasonable overshadowing impacts and is considered to comply with the requirements of clause 3.4.1 *Sunlight Access and Overshadowing*. The privacy and views are maintained with this development. Additionally, see clause 3.4.2 *Privacy and Security* for a detailed assessment. 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 significant 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.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of \$5,149 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$514,947.

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 Environment Plan 2013 seeking to justify variation of the development standard contained within Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to a Clause 4.6 variation greater than 10% to the Floor Space Ratio under the Manly Local Environment Plan 2013.

The concerns raised in the objections have been addressed and resolved by built form and design amendments, or detailed assessments against the relevant controls.

The critical assessment issues include floor space ratio, privacy, total open space and setbacks.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/1703 for Alterations and additions to a dwelling house on land at Lot 18 DP 5236, 37 Osborne Road, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA04	B	SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN	ACTION PLANS	25 February 2025
DA05	B	EXISTING GARAGE FLOOR PLAN	ACTION PLANS	25 February 2025
DA06	B	EXISTING LOWER GROUND FLOOR PLAN	ACTION PLANS	25 February 2025
DA07	B	EXISTING GROUND FLOOR PLAN	ACTION PLANS	25 February 2025
DA08	B	PROPOSED GARAGE FLOOR PLAN	ACTION PLANS	25 February 2025
DA09	B	PROPOSED LOWER GROUND FLOOR PLAN	ACTION PLANS	25 February 2025
DA10	B	PROPOSED GROUND FLOOR PLAN	ACTION PLANS	25 February 2025
DA11	B	NORTH ELEVATION	ACTION PLANS	25 February 2025
DA12	B	EAST ELEVATION	ACTION PLANS	25 February 2025
DA13	B	WEST ELEVATION	ACTION PLANS	25 February 2025
DA14	B	SOUTH ELEVATION	ACTION PLANS	25 February 2025
DA15	B	STREET ELEVATION	ACTION PLANS	25 February 2025
DA16	B	LONG SECTION 01 / CROSS SECTION	ACTION PLANS	25 February 2025
DA17	B	LONG SECTION 02	ACTION PLANS	25 February 2025
DA18	B	AREA CALCULATIONS 01	ACTION PLANS	25 February 2025
DA20	B	SAMPLE BOARD	ACTION PLANS	25 February 2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
STORMWATER DRAINAGE PLAN (DWG NO: STORM-1/A)	-	TAYLOR CONSULTING	25 FEB 2025
BASIX CERTIFICATE (A1766686)	-	ACTION PLANS PTY LTD	30 September 2024
Preliminary Geotechnical Assessment	1	ASCENTGEO	7 November

			2024
WASTE MANAGEMENT PLAN	-	APPLICANT	06/12/2024

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.

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	03/01/2025

(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.

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:

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

Demolition and excavation works are restricted to:

- 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 \$5,149.47 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 \$514,947.01.

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. 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, dated 25.02.2025. 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.

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.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **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.

10. **Photographic Archival Record**

A photographic archival record of the existing boat House and its curtilage is to be made, including interiors and exteriors and their setting, generally in accordance with the guidelines issued by the NSW Heritage Division of the Department of Planning and Environment.

This record must be submitted and approved by Council's Heritage Advisor prior to the issue of the Construction Certificate and commencement of any works on-site. The photographic record should be made using digital technology, submitted on archival quality, and should include:

- Location of the house, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.

Reason: To provide an archival photographic record of the existing building.

11. **Retention of chimneys**

The chimneys at the rear are to be retained as they are considered to contribute to the heritage values of the existing building. Details, demonstrating compliance with this condition are to be submitted to Council, prior to the issue of the Construction Certificate.

Reason: To ensure the heritage values of the existing property are retained.

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. **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

15. **Wildlife Protection**
If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.
16. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.
17. **Road Reserve**
The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.
18. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
 - Work Health and Safety Act;
 - Work Health and Safety Regulation;
 - Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
 - Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
 - Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
 - The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.
Reason: For the protection of the environment and human health.
19. **Geotechnical Requirements**
All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

20. **Survey Certificate**

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

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

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

21. **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.

22. **Protection of stone kerb along Osborne Road**

Care should be taken to ensure that the heritage listed stone kerbs along Osborne Road are not damaged as a result of construction works or vehicles.

Reason: To ensure the heritage listed kerbs are protected.

23. **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

24. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

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

25. **Stormwater Disposal**

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

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

26. **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.

27. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor), and Civil Engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches

Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

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

28. 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.

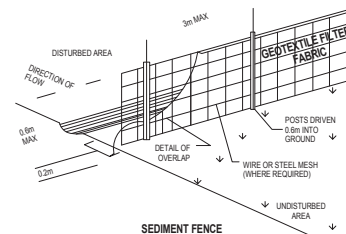
Reason: To ensure geotechnical risk is mitigated appropriately.

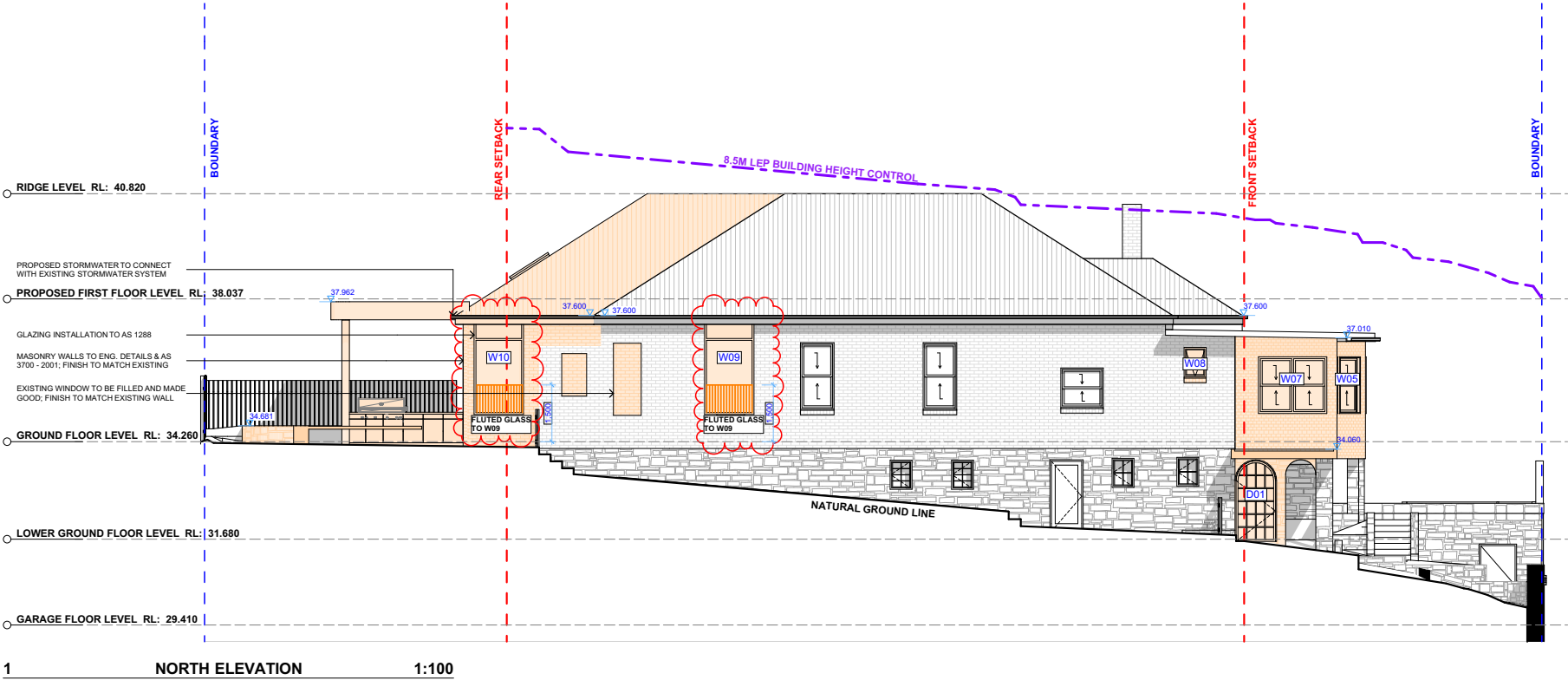
29. Approved Works

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: ALL PROPOSED STORMWATER
TO CONNECT WITH EXISTING**





1 NORTH ELEVATION 1:100



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REV.	DATE	COMMENTS	DRWN
A	23.10.24	DEVELOPMENT APPLICATION	CA
B	25.02.2025	DA - REV B	AP

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

LEGEND	EXISTING
METAL ROOFING	EXISTING
TILED ROOFING	STONE CLADDING
TIMBER CLAD	
BRICKWORK	
CONCRETE	

CLIENT
Robyn & David Lowe

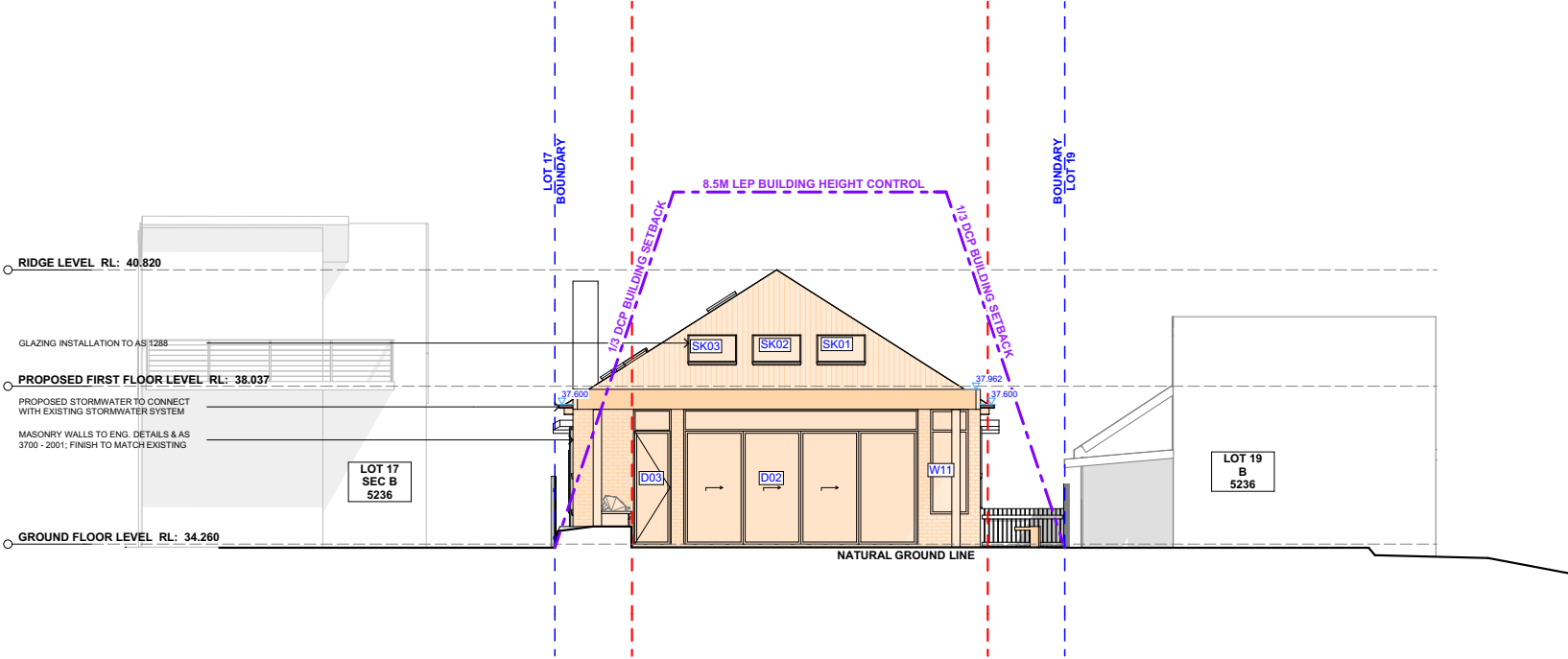
PROJECT ADDRESS
37 Osborne Road Manly
NSW, 2095

DRAWING NO.
DA11

DATE
Tuesday, 25 February
2025

DRAWING NAME
NORTH ELEVATION

SCALE
1:100 @A3



EAST ELEVATION 1:100



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

LEGEND
EXISTING
DEMOLISHED
PROPOSED WORK

CLIENT
Robyn & David Lowe

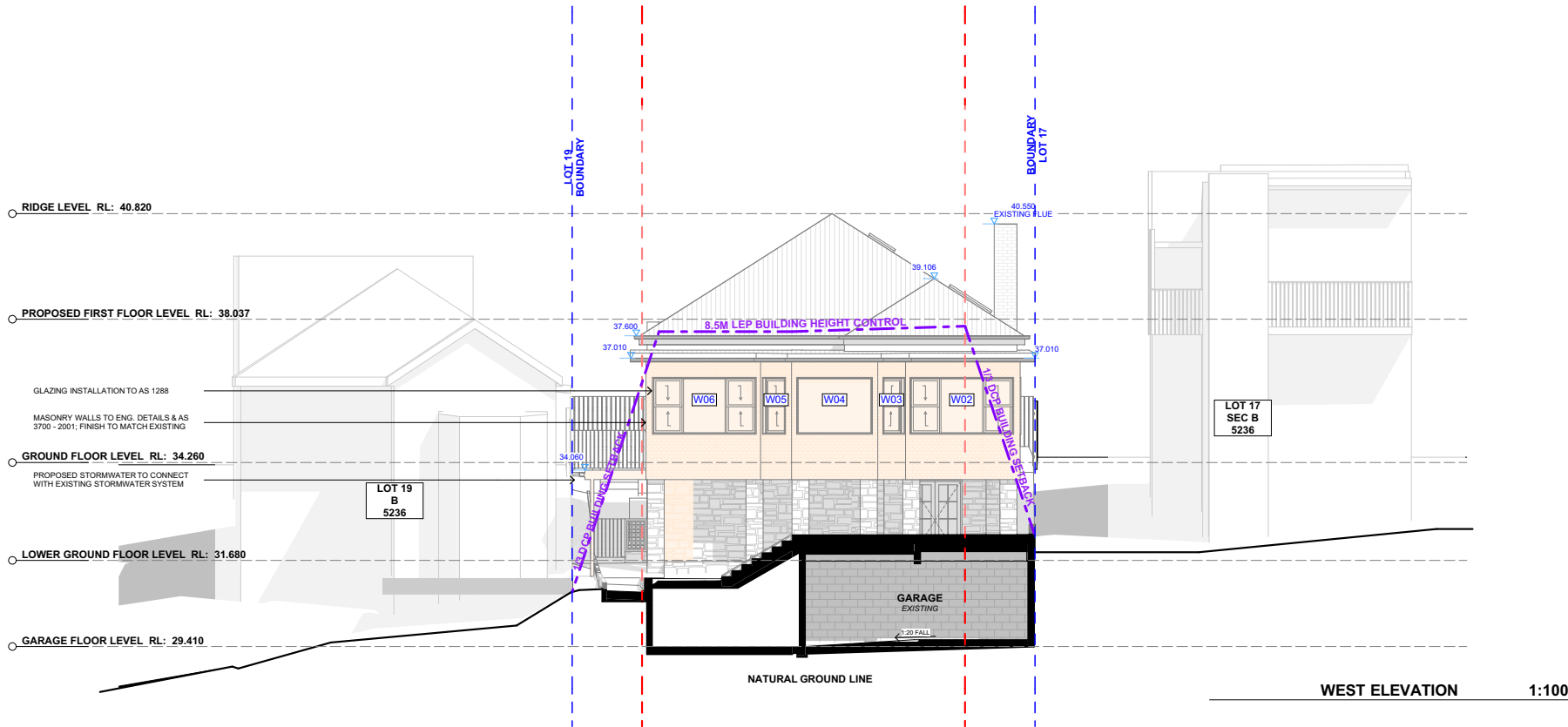
PROJECT ADDRESS
37 Osborne Road Manly
NSW, 2095

DRAWING NO.
DA12

DATE
Tuesday, 25 February
2025

DRAWING NAME
EAST ELEVATION

SCALE
1:100 @A3



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

LEGEND	
	METAL ROOFING
	TILED ROOFING
	TIMBER CLAD
	BRICKWORK
	CONCRETE
	EXISTING STONE CLADDING

CLIENT
Robyn & David Lowe

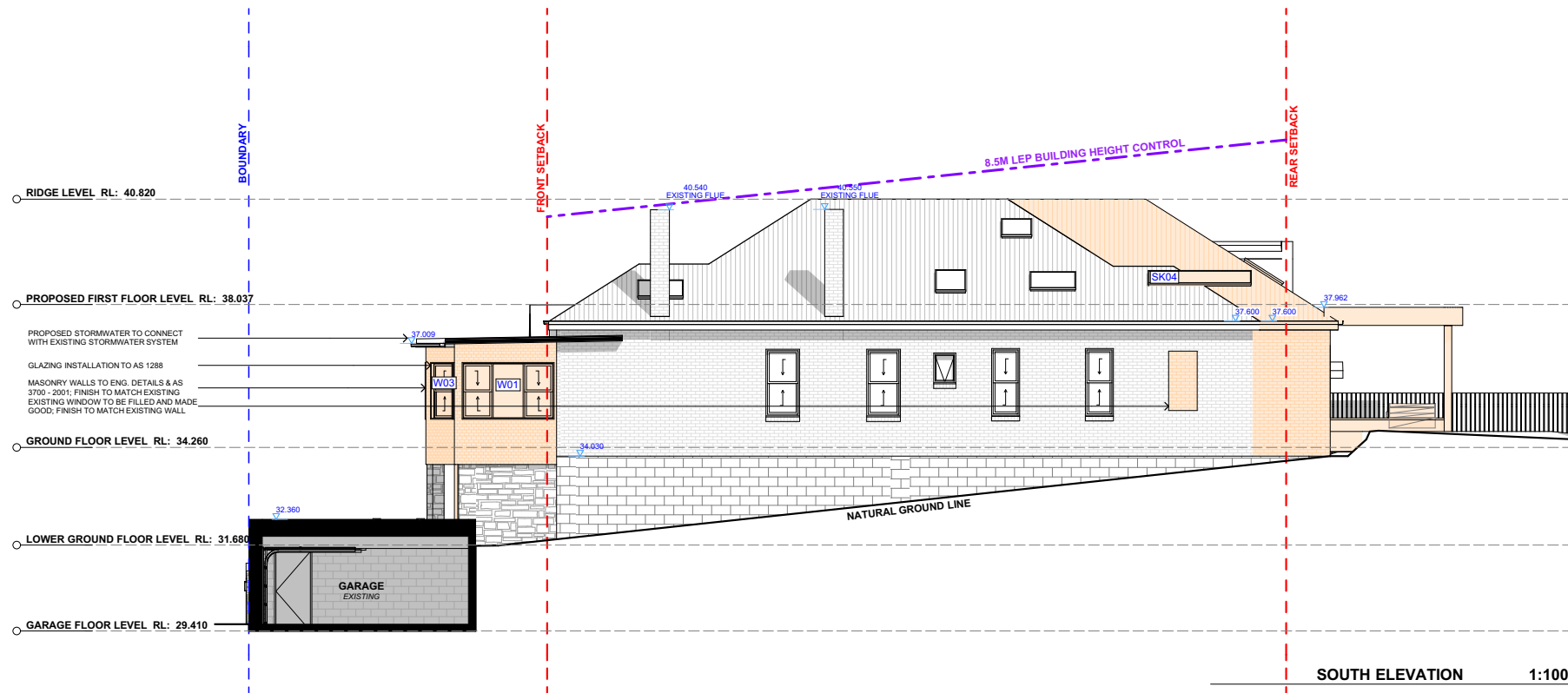
PROJECT ADDRESS
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DRAWING NO.
DA13

DATE
Tuesday, 25 February
2025

DRAWING NAME
WEST ELEVATION

SCALE
1:100 @A3



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REV.	DATE	COMMENTS	DRWN
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B	25.02.2025	DA - REV B	AP

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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	
	METAL ROOFING
	TILED ROOFING
	TIMBER CLAD
	BRICKWORK
	CONCRETE
	EXISTING STONE CLADDING

CLIENT
Robyn & David Lowe

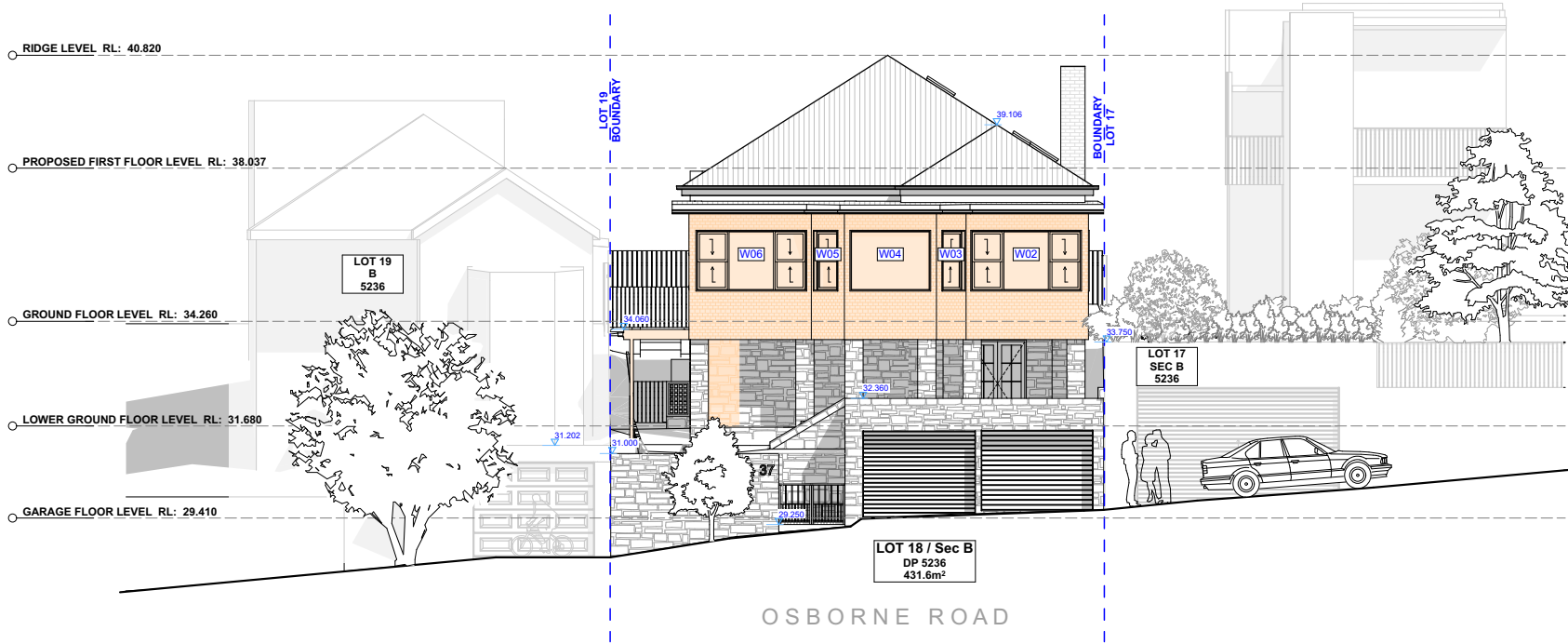
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37 Osborne Road Manly
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DRAWING NO.
DA14

DATE
Tuesday, 25 February
2025

DRAWING NAME
SOUTH ELEVATION

SCALE
1:100 @A3



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

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

LEGEND
EXISTING
DEMOLISHED
PROPOSED WORK

CLIENT
Robyn & David Lowe

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37 Osborne Road Manly
NSW, 2095

DRAWING NO.
DA15

DATE
Tuesday, 25 February
2025

DRAWING NAME
STREET 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
Dwelling House and Associated Works**

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Manly, NSW 2095**

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☎ 0425232018

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PO Box 361, Balgowlah NSW 2093

Alterations and Additions to Existing Dwelling House 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:

Robyn and David Lowe

5 December 2024

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 Dwelling House and Associated Works

1. Introduction

The nature and extent of the contravention is as follows:

Requirement	0.6:1 258.96sqm
Existing	0.65:1 280.05sqm
Proposed	0.67:1 288.83sqm
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	11.53%

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 proposal retains the site as a dwelling house.

- **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 Dwelling House 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. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

Clause 4.6(5) of MLEP has been repealed and is not applicable.

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause

Alterations and Additions to Existing Dwelling House and Associated Works

4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of the MLEP2013 from the operation of clause 4.6.

3. Relevant Caselaw

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

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

1. Is clause 4.4 of MLEP2013 a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard?

4. Request for Variation

4.1 Is clause 4.4 of MLEP2013 a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:

“(d) the cubic content or floor space of a building”

- (b) Clause 4.4 relates to the floor space ratio or floor space of a building. Accordingly, clause 4.4 is a development standard.

4.2 Is compliance with clause 4.4 unreasonable or unnecessary?

- (a) This request relies upon the 1st, 2nd and 4th ways identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved. The second way in *Wehbe* is to establish that an objective is not relevant to the development. The fourth way in *Wehbe* is to establish that the development standard has been abandoned by Council’s own actions in approving development that does not comply with the standard.
- (c) Each objective of the standard and reasoning why compliance is unreasonable or unnecessary is set out below. Firstly, an analysis of the objectives is provided:

In determining a merits-based assessment for the floor space ratio of the development due consideration has been given to the above objectives and the planning principles set by the Land and

Alterations and Additions to Existing Dwelling House 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 mixed-use development.

The proposal is consistent with the objectives of Clause 4.4, as outlined below:

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

The development proposes alterations and additions to create a functional and modern dwelling with usable private open space within the rear setback. It is acknowledged that the variation required is due to the technicality of the lower ground floor "storage" area required to be included in GFA calculations. It is noted that if the storage area was excluded, the proposal would comply with the 0.6:1 FSR control. The proposal addition to GFA relates to 8.78sqm only to the rear façade which when viewed would not be noticeable or impact the streetscape or public domain. The apparent bulk and scale of the dwelling will be negligibly impacted, from the existing approved dwelling and the new refurbishment works will ensure a positive contribution to the streetscape. Therefore, the proposed minor variation is consistent with the intent of the objectives in that the proposal is consistent with the streetscape character and bulk and scale of the area.

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

The development will result in a built form and massing that is of a consistent scale to the existing dwelling and surrounding properties. The development will not obscure any important landscape or townscape features and will not result in any view loss impacts. It is therefore considered this objective is met, despite the numerical variation.

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

The proposed works are visually appropriate for the locality when viewed from the streetscape. The landscaped area on the property will remain relatively unchanged with an increased garden bed to the northern side boundary. In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

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

The proposal will have no 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.

Not applicable – the site is located within a residential zone.

Alterations and Additions to Existing Dwelling House and Associated Works

It is acknowledged that Council has consistently held that there are adequate environmental planning grounds for alterations and additions to vary the development standard for floor space ratio. There is precedence within the immediate locality, and it's also acknowledged that the adjoining property 35 Osborne Road currently has a development application before Council with a proposed variation of 0.69:1. The proposed variation for this application is minor (only 8.78sqm) and relates to creating a functional and usable private open space that integrates with the proposed living and dining area.

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 Osborne Road, and therefore the variation can be supported by Northern Beaches Council.

As outlined above, the proposed development is consistent with the underlying objectives of the FSR standard, notwithstanding the proposed variation, and therefore compliance with the control is unreasonable and unnecessary and therefore the variation can be supported by Northern Beaches Council.

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

There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

*"to achieve better outcomes **for and from** development by allowing flexibility in particular circumstances."*

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

Context

- The area surrounding the subject site is characterised by 2 and 3 storey residential dwellings, stepped to accommodate the sloping topography.
- The proposed dwelling has been designed to remain consistent with the character of the locality, despite the variation to FSR, through design, architectural features and complimentary materials and colour choices.
- The proposal has been designed as alterations and additions with the main addition relating to the rear of the site which increases GFA but provides an integrated space between the dwelling and private open space of the site.
- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:

Alterations and Additions to Existing Dwelling House and Associated Works

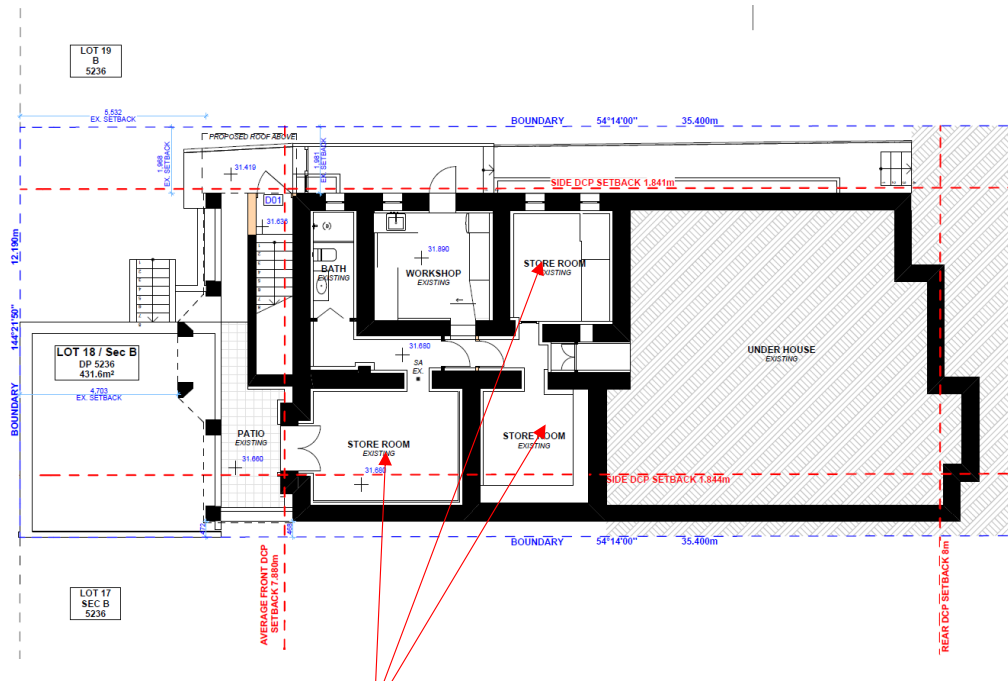
- DA2024/1351 – 35 Osborne Road, Manly – 0.69:1 – 15.3% variation (under assessment)
- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed alterations and additions will allow for the provision of a modern floor plan, with refurbished and improved internal spaces that integrate with the main private space area for the site.
- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is relatively consistent with the existing dwelling and other buildings in the locality,
- The minor increase to the floor area of 8.78sqm is considered reasonable as it is located as a minor extension to the rear of the property 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).

Existing Floor Space

- It's acknowledged that if the storage area under the dwelling was not included, the proposal would comply with Clause 4.4. The variation is the basis of existing unusable floor space which gets included due to the definition of GFA. Noting the unpracticality of that space, the minor increase for usable components of the dwelling can and should be supported. Refer to excerpt below:



Spaces that are unusable included in GFA calculations

Alterations and Additions to Existing Dwelling House and Associated Works

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. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report

EP&A Act Objectives

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):

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

Alterations and Additions to Existing Dwelling House and Associated Works

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 3.5	DA2024/1651 - 10 CLARENCE STREET, BALGOWLAH - 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

- | |
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| <p>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.</p> <p>B. That Council as the consent authority approves Development Consent to DA2024/1651 for alterations and additions to a semi-detached dwelling on land at Lot 2 DP 445281, 10 Clarence Street, Manly, subject to the conditions set out in the Assessment Report.</p> |
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Reporting manager	Rodney Piggott
TRIM file ref	2025/192969
Attachments	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1651
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Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 2 DP 445281, 10 Clarence Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Benjamin Baader

Application Lodged:	04/12/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/12/2024 to 20/01/2025
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.4 Floor space ratio: 24.9%
Recommendation:	Approval

Estimated Cost of Works:	\$ 765,777.76
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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 variation greater than 10% to the floor space ratio (FSR) development standard of the Manly Local Environment Plan 2013.

Concerns raised in the objections predominantly relate to stormwater management, the size of a proposed parking space and solar access.

Critical assessment issues included assessment of the proposed variation to the FSR development

standard, assessment of potential solar impacts, and assessment of proposed variations to the following Manly Development Control Plan built form controls:

- Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Clause 4.1.4 Setbacks (front, side and rear) and Building Separation
- Clause 4.1.5 Open Space and Landscaping
- Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
- Clause 4.1.10 Fencing

The 4.6 request for the non-compliance with the FSR development standard arises from a 84.6sqm increase in gross floor area (GFA), taking the FSR of the site from an existing 0.31:1 (102.3sqm) to a proposed 0.56:1 (186.9sqm). This represents a 24.9% (37.23sqm) non-compliance with the applicable FSR development standard of 0.45:1 (149.67sqm). However, it is noted that the proposed FSR does achieve compliance with the undersized allotment FSR dispensation stipulated within the MDCP Clause 4.1.3 Floor Space Ratio (FSR). Furthermore, the recent NSW Land and Environment Court approval of DA2022/0727 for alterations and additions to the semi-detached dwelling adjoining the subject site at 12 Clarence Street (a development very similar to the one proposed under this application) was approved with an identical numerical GFA. As such, the proposed development will not be out of character with surrounding development.

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

PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks development consent for alterations and additions to a semi-detached dwelling. Specifically, the following is proposed:

Front Yard - Part demolition and rebuilding of the existing front fence and front porch to accommodate a new access driveway and crossover from Clarence Street to a car parking space at the front of the property. A new paved pathways is also provided to the existing porch and entry door.

Ground Floor Plan - Additions to the rear of the existing floor plate to accommodate a new sitting room, bathroom and open plan kitchen, living and dining room. The living room opens onto a new rear facing deck with operable pergola over and external stairs. The 2 existing bedrooms at the front of this floor plate are retained with internal stair access provided to the new floor plate above.

First Floor Plan - This floor plate accommodates 2 bedrooms, the main with ensuite and robe, with the rear bedroom opening onto a north facing sunroom plus deck. A range of skylights and glass flooring elements are proposed to maximise solar penetration to the first-floor rooms and ground floor sitting room.

The proposed development also includes removal of trees and stormwater management works.

Additional information was requested in relation to a referral response from Council's Development Engineering team, as well as in relation to Manly Local Environmental Plan 2013 Clause 4.4 Floor space ratio & Clause 4.6 Exceptions to development standards and Manly Development Control Plan Clause 4.1.4 Setbacks (front, side and rear) and Building Separation & Clause 4.1.5 Open Space and Landscaping. Additional / amended information was provided which satisfied this request and did not require re-notification, in accordance with the Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

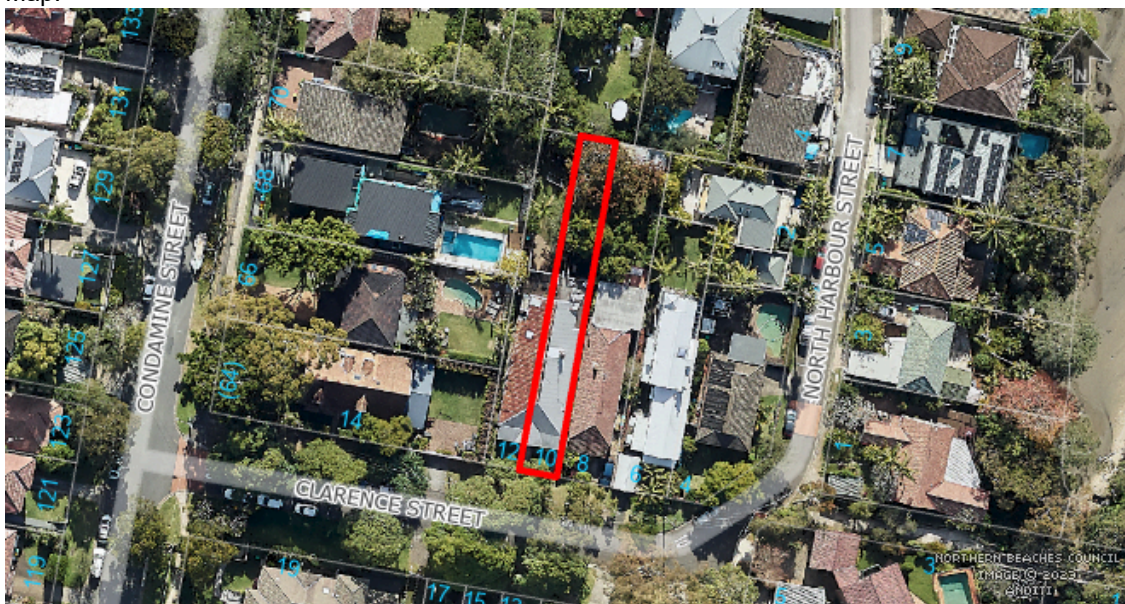
Manly Local Environmental Plan 2013 - Zone R2 Low Density Residential
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 2 DP 445281 , 10 Clarence Street BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Clarence Street. The site is irregular in shape with a frontage of 6.045m along Clarence Street and a depth of 54.715m. The site has a surveyed area of 332.6sqm. The site is located within the R2 Low Density Residential zone and accommodates a semi-detached dwelling. The site slopes from front (south) down towards the rear (north), with a fall across the site of 2m.

	The site contains lawn areas, garden beds, trees and vegetation. There are no details of threatened species at the subject site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by low density residential development, including dwelling houses and semi-detached dwellings.
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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:

Building Information Certificate No. BC2019/0203 for "rear stairs" was issued on 10 December 2019.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to a referral response from Council's Development Engineering team, as well as in relation to Manly Local Environmental Plan 2013 Clause 4.4 Floor space ratio & Clause 4.6 Exceptions to development standards and Manly Development Control Plan Clause 4.1.4 Setbacks (front, side and rear) and Building Separation & Clause 4.1.5 Open Space and Landscaping. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under

Section 4.15 Matters for Consideration	Comments
impacts on the natural and built environment and social and economic impacts in the locality	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 13/12/2024 to 20/01/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr John Malcolm Travis	8 Clarence Street BALGOWLAH NSW 2093
Mrs Karen Heather Ryan	6 Clarence Street BALGOWLAH NSW 2093

The following issues were raised in the submissions:

- **Stormwater Management**

The submissions raised concerns regarding the proposed stormwater management of the development. Concerns primarily related to the potential for overflow into neighbouring properties. Submissions requested stormwater be directed to Clarence Street.

Comment:

The proposed stormwater management at the property has been assessed by Council's Development Engineering team. It was noted that the property is a low level property (meaning a property that has a ground level which is lower than the roadway fronting the property). The Development Engineering team has noted that the proposed stormwater management does not comply with Section 5.1 and 5.5 of the Northern Beaches Council's Water Management for Development Policy, as the plan includes changed discharge of stormwater to Clarence Street. The policy does not favor this options, with preference given to downstream easements, followed by OSD and level spreaders if easements are unfeasible.

However, as has been noted in submissions, there is history of surrounding properties using this method to discharge stormwater to Clarence Street. Furthermore, the recent NSW Land and Environment Court approval of DA2022/0727 for alterations and additions to the semi-detached dwelling adjoining the subject site at 12 Clarence Street (a development very similar to the one proposed under this application) has also seen this method of stormwater discharge utilised. As such, the Council's Development Engineering team has concluded that the proposed stormwater management is acceptable in this instance, subject to conditions.

- **Motorbike Parking Space**

The submissions raised concerns that the initially proposed motorbike parking space could be used for car parking, which, due to the small dimensions proposed, could result in overhang of cars in the nature strip.

Comment:

The size of the motorbike parking space was a concern raised with the Applicant in a Request for Further Information letter. In response, the proposed development was amended to include a full sized hardstand parking space. As this space meets Australian Standards, it is considered to be of adequate size, discouraging parking of vehicles abutting into or across the medium strip. Any parking of vehicles in the future will need to comply with relevant road rules. The proposed vehicular parking and access has been reviewed and supported by Council's Development Engineering team, subject to conditions.

- **Solar access**

The submissions raised concerns that the proposed development would create unreasonable solar access / overshadowing impacts on the adjoining property to the east (8 Clarence Street). The submissions requested additional diagrams including greater detail of neighbouring properties and summer solstice diagrams.

Comment:

Refer to the section of this report on MDCP Clause 3.4.1 Sunlight Access and Overshadowing for detailed assessment of solar access / overshadowing. In summary, the proposed development maintains adequate solar access to adjoining areas of private open space at 8 Clarence Street and does an adequate job at considering solar access to surrounding properties. However, the proposed development will potential result in non-compliance with living room window solar access controls (depending on the internal layout of 8 Clarence Street). Nonetheless, Council is satisfied the proposed development will provide equitable access to light and sunshine, considering environmental and built form solar access constraints. On balance, the impact on solar access to 8 Clarence Street is not considered to be unreasonable and the proposal is supported on merit.

Regarding provided solar access diagrams, the information provided by the Applicant was considered to be adequate for the purposes of this assessment. It is noted that shadow diagrams are not required for any time of the year other than the winter solstice as solar access controls only relates to impacts on the winter solstice, as this is theoretically the day of greatest impact (given it is the day of the year that the sun is lowest in the sky).

- **Impact on property values**

The submissions raised concerns that the proposed development would negatively impact the value of surrounding properties.

Comment:

Property values are not a relevant matter for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. However, amenity concerns that have been raised in relation to property values have been considered to the extent they are relevant to planning controls.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<u>Supported, subject to conditions.</u> The application is for alterations and additions to an existing dwelling, as described in reports and as illustrated on plans. For consideration of Landscape Referral an Arboricultural Impact Assessment (AIA) is submitted. Should the proposed crossover and driveway be approved then the existing street tree identified as T4 requires removal. Additionally one prescribed tree within the property requires removal identified as T3. One neighbour tree identified as T2 is in close proximity to proposed works and it is however noted that hard surface areas are contained within the development property over which proposed works are intended. Regardless as advised in the AIA report a tree root investigation shall be conducted to determine if any impacts will require design modification. The proposed deck and stairs works in proximity to T2 are raised above natural ground thus shall be designed to select pier footing locations based on tree root locations. Landscape Plans are submitted that include small native tree planting and other planting and no concerns are raised subject to imposed conditions. The proposed street tree planting shown fronting an adjoining property is not acceptable. The proposed crossover and driveway removes one existing street tree and there is no available soil area remaining fronting the development site to replace the removed street tree. The proposed Bamboo screen planting along the side boundary to property No. 8 is to be controlled to a managed height of no more than 3.5 metres to maintain solar access to the adjoining property and reduce ongoing issues associated with

Internal Referral Body	Comments
	unmanaged height of the Bamboo species. It is noted that the proposed total open space area is less than the control and this matter shall be determined by the Assessing Planning Officer.
NECC (Development Engineering)	<u>Supported, subject to conditions.</u> The application is for alteration and addition as illustrated in the proposed plans. Development Engineer has reviewed the proposal in relation to stormwater management and provision for parking space. The stormwater management does not comply with 5.1 and 5.5 of Northern Beaches Council's Water Management for Development Policy. Considering the LEC approval on the adjoining attached dwelling 12 Clarence Street and the submitted stormwater plans may be acceptable subject to S68 or S138 approval for the stormwater management of the site, in particular works within Public Road. The stormwater pipes may require to be metal (ductile iron) pipe or similar. The proposed motorbike parking is not acceptable for reasons provided below:- • The proposed parking space does not comply with Manly DCP Schedule 3 Part B1 • A 3.0 meters wide driveway is not required for motor cycle parking space. • Non-compliance with Council's Driveway and Vehicular Crossing for the attached dwellings, where only one shared driveway is permitted. UPDATE DATED 12/03/2025 The applicant has submitted an amended car parking plan. While the driveway provides skewed access, it may be acceptable under the circumstances. There are no objections from Development Engineering, provided the conditions outlined below are met.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<u>Supported, subject to conditions.</u> 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. A1767362_03, issued 5 March 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, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.2m	-	Yes
Floor Space Ratio	FSR: 0.45:1 (149.67sqm)	FSR: 0.56:1 (186.9sqm)	24.9% (37.23sqm)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
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

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposed development is for alterations and additions to an existing semi-detached dwelling, which will allow for the alteration / adaptation of existing low density housing stock to

serve the changing housing needs of owners / occupiers within the community.

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

Comment:

N/A - the proposed development is for residential purposes within this residential area. Nonetheless, the proposed development will not impede on other such land uses.

Overall, the proposed development complies with the underlying objectives of the R2 Low Density Residential zone.

4.6 Exceptions to development standards

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

Development standard: Clause 4.4 Floor space ratio

Requirement: 0.45:1 (149.67sqm)

Proposed: 0.56:1 (186.9sqm)

Percentage of variation: 24.9% (37.23sqm)

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

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.4 Floor space ratio is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

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

The Applicant's written request seeks to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. This is the first of five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council [2007] NSWLEC 827*. The objectives of the development standard are addressed within the 4.6 request as follows:

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

Response from the Applicant:

"The proposed additions are well articulated, with a height, bulk and scale that is appropriately responsive to that of surrounding and nearby development including that recently approved by the Land and Environment Court of New South Wales pursuant to DA2022/0727 involving alterations and additions to the adjoining dwelling in the pair at 12 Clarence Street, Balgowlah. The massing of the building is consistent and compatible with that of other development along Clarence Street with the single storey built form presentation maintained at the street frontage and the first floor additions setback and recessive elements in a streetscape context.

"Council can be reasonably satisfied that the bulk and scale of the proposed development, as expressed as a floor space ratio, is consistent with the existing and desired character of the area. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the proposed development by virtue of its bulk and scale (FSR) offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the visual catchment of the site."

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

Response from the Applicant:

"Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 186.9m² of gross floor area proposed, representing an FSR of 0.373:1 (based on 500m²), is below the maximum prescribed gross floor area of 225m² 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... the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with this objective."

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

Response from the Applicant:

"As previously indicated, consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the proposed development by virtue of its bulk and scale (FSR) offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the visual catchment of the site including that recently approved by the Land and Environment Court of New South Wales pursuant to DA2022/0727 involving alterations and additions to the adjoining dwelling in the pair at 12 Clarence Street, Balgowlah."

"The proposed development is compatible with the existing streetscape and the character of the wider R2 Low Density Residential zone both in terms of building form and landscape outcomes. This objective is achieved notwithstanding the non-compliant FSR proposed."

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

Response from the Applicant:

"This objective is the same as the primary purpose/ objective outlined at clause 4.1.3 of the DCP as confirmed in the note... 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 noncompliance, maintains an appropriate visual relationship between new development and the existing built form character of the area."

"In relation to landscape character, the additional floor space does not require the removal of any significant trees or vegetation with a compliant quantum of landscaped area maintained. The building will sit within a landscaped setting. 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."

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

Response from the Applicant:

"Not Applicable."

The arguments provided by the Applicant in response to the objectives are generally concurred with. The proposal complies with the dispensation outlined in MDCP Clause 4.1.3 Floor Space Ratio (FSR), which provides guidance for assessing FSR variations where allotments are undersized. In this instance, the Clause stipulates that a variation may be accepted based on calculation of FSR using a 500sqm lot size. If the lot were to have a 500sqm lot size, the FSR of 0.45:1 would allow a GFA of 225sqm. The proposed GFA of 186.9sqm would be compliant in this case. Furthermore, the proposed development seeks approval for the same FSR variation as was recently approved in the adjoining semi-detached dwelling at 12 Clarence Street. This neighbouring development under DA2022/0727

was approved by the NSW Land and Environment Court with a GFA also of 186.9sqm. As such, the proposed development will not be out of character with surrounding development. It is considered that the objectives of the standard are achieved despite non-compliance with the standard.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

- *"Sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment including that recently approved by the Land and Environment Court of New South Wales pursuant to DA2022/0727 involving alterations and additions to the adjoining dwelling in the pair at 12 Clarence Street, Balgowlah. The proposed FSR is identical to that approved for the adjoining property."*
- *"The variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and in my opinion represents an abandonment of the FSR standard on undersized allotments."*
- *"Support of a variation generally consistent with recent development consents issued by Council and the Court on undersized allotments."*

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.
- Support of a variation is generally consistent with recent development consents issued by Council and the Court on undersized allotments, reflecting the orderly development of the land and consistency in the decision making process, thereby satisfying object 1.3(c) of the EPA Act.
- Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants. This promotes ecologically sustainable development and the orderly development of land, thereby satisfying objects 1.3(b) and (c) of the EPA Act.

Public Interest:

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

Conclusion:

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

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

Mainly Development Control PlanBuilt Form Controls

Built Form Controls - Site Area: 332.6sqm	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings (1 dwelling per 500sqm of site area)	1	-	Yes
	Dwelling Size: 107sqm (4 bedrooms, 2 bathrooms)	186.9sqm	-	Yes
4.1.2.1 Wall Height	East: 6.7m (based on gradient 1:30)	7.9m	17.9%	No
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.4m	-	Yes
	Pitch: maximum 35 degrees	5 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Existing Porch: 5m, consistent with prevailing setback Parking: Nil, inconsistent with prevailing setback	- 100%	Yes No
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: GF: 1.4m (based on 4.2 wall height) FF: 2.6m (based on 7.9m wall height)	GF: 1.2m FF: 1.6m - 2.2m	14.3% 38.5%	No No
	No new windows within 3m of a side boundary	11 new windows within 3m of a side boundary	N/A	No
4.1.4.4 Rear Setbacks	8m	14.3m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (182.93sqm)	35.3% (117.3sqm)	35.9% (65.63sqm)	No
	No more than 25% of open space above ground (29.325sqm)	18.4% (21.6sqm)	-	Yes

4.1.5.2 Landscaped Area	Landscaped area 35% of open space (41.055sqm)	73.8% (86.6sqm)	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m (3m)	2.7m	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 car spaces	50%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	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
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

Council has received submissions raising concern over potential overshadowing / solar access issues relating to the proposed development. The neighbouring property to the east of the subject site (8 Clarence Street) is considered in the following assessment.

Shadow diagrams have been submitted with the proposed development, showing the shadowing impact at 9am, 12pm and 3pm on 21 June (winter solstice). These are considered to be adequate for the below assessment. It is noted that shadow diagrams are not required for any other time of year, as the control only relates to winter solstice impacts, as this is theoretically the day of greatest impact (given it is the day of the year that the sun is lowest in the sky).

3.4.1.1 Overshadowing Adjoining Open Space

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

- a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) ; or*
b) Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.

As winter sunlight is available to private open space at 8 Clarence Street, (a) is applicable.

The existing primary area of private open space at 8 Clarence Street is at the northern end of the site (i.e. the rear yard). The proposed development at the subject site will only cast shadows towards 8 Clarence Street in the afternoon. Due to the position of the development generally in an east-west line with the dwelling at 8 Clarence Street, this additional shadowing will not be cast significantly into the rear yard of 8 Clarence Street. 8 Clarence Street will continue to receive adequate solar access to areas of private open space in accordance with this control.

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

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

- a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);*
- b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);*
- c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.*

With a north-south orientation (b) and (c) are applicable to the windows of 8 Clarence Street.

The proposed development will cast additional shadows along the western elevation of 8 Clarence Street, with windows on this elevation impacted in the afternoon between 12pm and 3pm. Furthermore, the dwelling itself at 8 Clarence Street would generally result in shadowing of western elevation windows between 9am and 12pm.

Whilst this control only applies to living rooms (i.e. not service rooms such as storage, bathrooms, laundry, etc.), the exact internal room layout at 8 Clarence Street is not known. Therefore, the proposal may result in technical non-compliance with this control in relation to western elevation windows at 8 Clarence Street. However, it must be noted that this is a largely unavoidable situation along the side elevations of narrow allotment within areas with narrow dwelling houses and semi-detached dwellings lined up east to west, (with front and rear oriented north to south), and with controls that permit two-storey structures (noting that the proposed development complies with the height of buildings development standard). Such environments foster side elevations where sunlight only reaches between elevations around solar noon. It should also be noted that if the primary living rooms of 8 Clarence Street are located at the northern end of the dwelling house, the solar access received by the northern elevation will only be minorly impacted at the end of the afternoon by the proposed development, and would remain reasonable within the residential context.

Merit consideration

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

Objective 1) To provide equitable access to light and sunshine.

Comment:

As discussed above, all properties with a narrow, north-south allotment orientation, where controls permit two-storey structures, are vulnerable to overshadowing along side elevations. Such environments foster side elevations where sunlight only reaches between elevations around solar noon. The proposed development maintains adequate solar access to adjoining areas of private open space at 8 Clarence Street and does an adequate job at considering solar access to surrounding properties. Notwithstanding the potential for technical non-compliance with the living room window solar access control, Council is satisfied the proposed development will provide equitable access to light and sunshine, considering environmental and built form solar access constraints.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

As detailed above, the proposed development achieves compliance with the requirements of Clause 3.4.1.1 Overshadowing Adjoining Open Space. However, the proposal will potentially result in non-compliance with Clause 3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties. Nonetheless, on balance it is considered that adequate solar access is able to penetrate adjoining properties, considering environmental and built form solar access constraints.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

During the assessment process, side setbacks were raised and an issue to the Applicant. An amended proposal was received which slightly reduced the floorspace of the proposed development at the first floor and increased modulation of the proposed eastern elevation built form, thereby also minorly reducing potential solar impacts. On balance, the impact on solar access to 8 Clarence Street is not considered unreasonable.

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

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

Description of non-compliance

Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) stipulates that walls are not to exceed the following heights:

- East Elevation: 6.7m (based on gradient 1:30)

The proposed development exhibits a maximum eastern elevation wall height of 7.9m, representing a 17.9% variation to the control.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at Clause 4.3 of the MLEP 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 complies with the MLEP 2013 building height development standard of 8.5m. The recent NSW Land and Environment Court approval of DA2022/0727 for alterations and additions to the semi-detached dwelling adjoining the subject site at 12 Clarence Street (a development very similar to the one proposed under this application) was approved with a similar wall height and with an identical ridge level. As such, the proposed roof form and wall height is considered 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,

Comment:

Two-storey dwellings of this size and scale can be found in this area. Again, the recent approval of DA2022/0727 at 12 Clarence Street is noted. The proposed development has been assessed against the requirements and underlying objectives of the MLEP and MDCP and is not considered to propose a dwelling excessive in terms of bulk and scale.

(c) to minimise disruption to the following—

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

Comment:

The proposed development is not anticipated to have any unreasonable impact on views to or from public or private 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:

Refer to the section of this report on MDCP Clause 3.4.1 Sunlight Access and Overshadowing for detailed assessment of solar access / overshadowing. In summary, the proposed development maintains adequate solar access to adjoining areas of private open space at 8 Clarence Street and does an adequate job at considering solar access to surrounding properties. However, the proposed development will potential result in non-compliance with living room window solar access controls (depending on the internal layout of 8 Clarence Street). Nonetheless, Council is satisfied the proposed development will provide equitable access to light and sunshine, considering environmental and built form solar access constraints. On balance, the impact on solar access to 8 Clarence Street is not considered to be unreasonable and the proposal is supported on merit.

(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 within a recreation or environmental protection zone.

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

4.1.3 Floor Space Ratio (FSR)

The proposed development has a FSR of 0.56:1 (186.9sqm) which represents a variation of 24.9% (37.23sqm) to the prescribed FSR of 0.45:1 (149.67sqm)

Clause 4.1.3 Floor Space Ratio (FSR) of the MDCP includes guidance for assessing variations where allotments are undersized. The subject site is 332.6sqm, and the minimum lot size as stipulated by Clause 4.1 Minimum subdivision lot size of the MLEP 2013 is 500sqm (Area I). Therefore, the subject site is undersized.

In this instance, the Clause stipulates that a variation may be accepted based on calculation of FSR using a 500sqm lot size. If the lot were to have a 500sqm lot size, the FSR of 0.45:1 would allow a Gross Floor Area (GFA) of 225sqm. The proposed GFA of 186.9sqm would be compliant in this case.

As such, the variation prescribed by this MDCP Clause is considered to apply and is an environmental planning ground justifying the variation of the FSR development standard. Refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to Development Standards for a detailed assessment of this variation to the FSR development standard, which finds that the variation is supported, in this instance.

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

Description of non-compliance

Clause 4.1.4.1 Street Front Setbacks stipulates that proposed front setbacks must relate to the front building line of neighboring properties and the prevailing building lines in the immediate vicinity. The proposed alterations and additions do not extend the building footprint any closer to the front boundary, with the semi-detached dwelling to maintain its existing 5m front setback, therefore consistent with the prevailing setback. However, the proposal includes a new hardstand parking space in front of the existing front porch, which will exhibit a nil front setback. Importantly, this is just a hardstand space, with no associated above ground shelter or structure.

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.

At the eastern side boundary, the following setbacks are required and exhibited:

- Ground Floor: 1.4m (based on 4.2m wall height) required, 1.2m exhibited, representing a 14.3% non-compliance.
- First Floor: 2.6m (based on 7.9m wall height) required, 1.6m - 2.2m exhibited, representing a 38.5% non-compliance.

Notably, the proposed additions continue the existing eastern ground floor side setback. Furthermore, the first floor side setback of at minimum 1.6m is greater than the recently approved side setback of a similar first floor addition at the adjoining semi-detached dwelling at 12 Clarence Street. DA2022/0727, approved by the NSW Land and Environment Court following an appeal, was approved with a first floor western side setback of at minimum 1.3m.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages also requires that no new windows be located within 3m of side boundaries. The proposed development includes replacement / alteration of 11 windows within 3m of side boundaries. Nonetheless, the proposed windows incorporate sufficient privacy solutions and are considered acceptable from a visual privacy perspective.

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 ground floor additions maintain the established existing side building line, respecting established setbacks. The first floor addition has a greater side setback than a recent approval at the adjoining semi-detached dwelling to the west. Regarding the front setback of the proposed hardstand, this is a ground level parking space, with no associated structure. It will not significantly alter the streetscape character, whilst providing a parking space for the use of owners / occupiers of the site, reducing non-compliance with specified parking standards. Overall, the proposal presents alterations and additions which are not considered to adversely impact the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street, particularly considering the recent approval of DA2022/0727 adjoining the subject site.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal is considered to meet the requirements of relevant clauses of the MDCP relating to amenity. The development is not considered to create unreasonable overshadowing on public or private spaces, or to unreasonably impact views from or to public or private spaces. The proposal is also considered to maintain existing streetscape characteristic and not to detrimentally impact on traffic conditions or the privacy of surrounding dwellings.

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

Comment:

Flexibility is required in the siting of alterations and additions to existing dwellings as the proposal must contend with existing site structures with existing non-compliances. The proposed alterations and additions are not expected to result in any unreasonable amenity impacts on surrounding properties. As such, flexibility is warranted, in this instance.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal is compliant with the landscape area provisions of the MDCP and maintains adequate landscaping and vegetation. Council's Landscape team has reviewed the proposal and are supportive, subject to conditions.

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

Comment:

The 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

The subject site is located within Residential Open Space Area OS3, which requires at least 55% (182.93sqm) of the site to be open space. In addition, at least 35% (41.055sqm) of the proposed total open space is to be landscaped area and no more than 25% (29.325sqm) of total open space can be provided above ground level.

The subject site exhibits a non-compliant level of total open space of 35.3% (117.3sqm), representing a variation of 35.9% (65.63sqm) to the requirement.

It is noted that the subject site achieves compliance with landscaped area, exhibiting a total of 73.8% (86.6sqm), and only 18.4% (21.6sqm) of open space is provided above ground level. Furthermore, even if the proposal was compliant with total open space, it would still have a compliant portion of landscaped area (i.e. if total open space was 182.93sqm, rather than 117.3sqm, the landscaped area of 86.6sqm would be still be in excess of 35% of this total open space). As such, the total open space deficiency does not contribute to undesirably low landscaped area.

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 landscaped area provided is compliant and sufficient vegetation is retained. In this regard, the

proposal retains and augments important landscape features and vegetation.

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

Comment:

The proposal exhibits landscaped area with dimensions capable of accommodating for any future plantings and maximises open space at ground level.

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

Comment:

The proposal does not result in any unacceptable impacts to amenity including sunlight, privacy, and views. The proposal is consistent with the surrounding area and streetscape character.

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

Comment:

An acceptable amount of soft landscaping is provided on site to minimise stormwater runoff and maximise water infiltration. The proposal complies with landscaped area.

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

Comment:

The proposed development is not likely to increase the spread of any weeds, or degradation of private or public open space.

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

Comment:

The proposed works are not expected to significantly affect wildlife habitat. 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)

Description of non-compliance

For semi-detached dwellings this Clause requires the provision of two (2) off-street parking spaces. The existing dwelling provides no off-street parking. The proposed development includes a hardstand parking space within the front setback area of the subject site, with a new access driveway. As such, the proposal would improve the parking provision at the subject site from nil to one, however the proposed development still is one space deficient of the required two spaces. It is noted that the Clause makes the following stipulation:

"In relation to the provision of parking for dwelling houses, Council may consider the provision of only

1 space where adherence to the requirement for 2 spaces would adversely impact on the streetscape or on any heritage significance identified on the land or in the vicinity."

Clause 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas also requires the following in regards to the design of garages, carports or hardstand areas:

- *The design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.*
- *Garage and carport structures forward of the building line must be designed and sited so as not to dominate the street frontage. In particular:*
 - *garages and carports adjacent to the front property boundary may not be permitted if there is a reasonably alternative onsite location;*
 - *carports must be open on both sides and at the front; and*
- *The maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.*

The proposal includes a single hardstand parking space within the front setback area. This control permits hardstand areas to be located forward of the front building line where there are no reasonable alternatives onsite. This is considered to be the case in this instance. No parking currently exists on site, and the narrow lot width would prevent the provision of parking at the side of the existing semi-detached dwelling without requiring significant alterations to the existing structure, which would negatively impact the amenity of the property and the streetscape. Furthermore, the proposed hardstand has no associated shelter or structure above, making its impact on the streetscape minimal.

Merit consideration

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

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

Comment:

The proposed hardstand provides accessible and adequate parking onsite for one (1) car. This level of parking is considered to be acceptable due to site constraints, considering that requiring any further parking provision would require significant alterations to the existing structure, which would negatively impact the amenity of the property and the streetscape. Furthermore, the proposed development improves the parking provision at the subject site from the existing nil situation.

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

Comment:

The proposed hardstand provides accessible and adequate parking onsite for one (1) car. As discussed above, this level of parking is considered to be acceptable due to site constraints and streetscape considerations. It will also will reduce the on-street parking demand by an equal amount.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to

minimise their visual impact in the streetscape.

Comment:

The location of and access to the parking space is considered to be efficient, safe and convenient. The lack of an associated shelter / structure above the hardstand is considered appropriate. The proposal is supported by Council's Development Engineering team, subject to conditions.

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

Comment:

The works are adequately sited and are unlikely to cause site instability or interruption to ground water flows.

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

Comment:

One new vehicular crossing is added as part of the access to the proposed hardstand. The proposed crossover and driveway is designed in such a way that would allow the neighbouring semi-detached dwelling at 12 Clearance Street to connect vehicular access, should the neighbour wish to develop a similar parking space on their site. In this regard, the width and number of footpath crossings is appropriately minimised

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

Comment:

Refer to the section of this report on MDCP Clause 4.1.5 Open Space and Landscaping for discussion of total open space, landscaped area and landscaping. In summary, the non-compliant level of total open space is supported on merit and does not result in an unreasonable low landscaped area. Adequate landscaped area is provided.

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

Comment:

The site is located within a residential area. The proposal will not restrict the use of active or public transport by residents of the area.

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

4.1.10 Fencing

Description of non-compliance

Under Clause 4.1.10 fences between the front street boundary and the building are to be no more than 1m high above ground level at any point. The fence height may be increased up to 1.5m where

the fence is open / transparent for at least the part of the fence higher than 1m.

The proposal includes fencing along the front boundary to Clarence Street. This fencing is solid in design and between 1m and 1.1m in height, representing a maximum 10% variation to the control.

Merit consideration

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

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

Comment:

Notwithstanding the variation, the fencing design is considered to be adequate, sufficiently low in height, and in keeping with the streetscape character. The proposed variation is relatively minor. Negative visual impacts are adequately minimised.

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

Comment:

The proposed frontage fence will not be out-of-character with the locality and will complement the streetscape, whilst still providing a sense of privacy and security to the front yard of the subject site.

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

Comment:

The proposed frontage fence is reasonable in this circumstance and therefore a soft landscape alternative is not required in this instance.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of \$7,658 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$765,778.

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 variation greater than 10% to the floor space ratio (FSR) development standard of the Manly Local Environment Plan 2013.

The concerns raised in the objections have been addressed and do not warrant refusal or further amendment of the application.

Critical assessment issues included assessment of the proposed variation to the FSR development standard, assessment of potential solar impacts, and assessment of proposed variations to the following Manly Development Control Plan built form controls:

- Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Clause 4.1.4 Setbacks (front, side and rear) and Building Separation
- Clause 4.1.5 Open Space and Landscaping
- Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
- Clause 4.1.10 Fencing

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

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/1651 for Alterations and additions to a semi-detached dwelling on land at Lot 2 DP 445281, 10 Clarence Street, BALGOWLAH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA 02	B	Demolition External	Hobbs Jamieson Architecture	25 February 2025

DA 03	B	Demolition Ground Floor Plan	Hobbs Jamieson Architecture	25 February 2025
DA 04	B	Demolition Roof Plan	Hobbs Jamieson Architecture	25 February 2025
DA 05	B	Site Plan	Hobbs Jamieson Architecture	25 February 2025
DA 06	B	Proposed Front Yard Plan & Elevation	Hobbs Jamieson Architecture	25 February 2025
DA 07	B	Proposed Ground Floor Plan	Hobbs Jamieson Architecture	25 February 2025
DA 08	B	Proposed First Floor Plan	Hobbs Jamieson Architecture	25 February 2025
DA 09	B	Proposed Roof Plan	Hobbs Jamieson Architecture	25 February 2025
DA 10	B	Proposed East Elevation	Hobbs Jamieson Architecture	25 February 2025
DA 11	B	Proposed West Elevation	Hobbs Jamieson Architecture	25 February 2025
DA 12	B	Proposed North & South Elevation	Hobbs Jamieson Architecture	25 February 2025
DA 13	B	Proposed Section A-A	Hobbs Jamieson Architecture	25 February 2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A1767362_03	-	Efficient Living Pty Ltd	5 March 2025
Arboricultural Impact Assessment	-	Complete Arborcare	29 October 2024
Preliminary Geotechnical Assessment	J5707	White Geotechnical Group	23 September 2024
Waste Management Plan - 10 Clarence Street, Balgowlah	-	-	-
Stormwater Management Plan, Drawing No. STORM-1	-	Taylor Consulting	17 October 2024
Landscape Plans, Project No. 242211, Drawing No. L-DA-01, L-DA-02, L-DA-03	C	Space Landscape Design	21 October 2024

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Referral - Ausgrid	Undated

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

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

3. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.
- Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.
- (Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a

safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$7,657.78 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 \$765,777.76.

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. **Tree Root Investigation and Tree Root Map**

- a) prior to the issue of a Construction Certificate, a tree root mapping investigation for tree T2 as identified in the Arboricultural Impact Assessment shall be undertaken, and a tree root map shall be documented that will be the basis for determining construction methodology near existing tree T2.
- b) an Arborist with minimum AQF Level 5 in arboriculture shall supervise the works to verify tree root locations. A non-destructive root investigation shall be conducted complying with clause 3.3.4 of AS 4970-2009 Protection of Trees on Development Sites.
- c) the root investigation shall map existing roots of significance that must not be impacted by construction works. The tree root investigation shall be conducted to confirm the following data

to be used for the location/alignment of any new proposed works:

- i) confirmation of the location of any tree roots at or >25mm (Ø) diameter to areas that require excavation for proposed works. Alternative alignment of proposed works shall be provided as necessary to avoid major roots, and
- ii) mapping of the suitable location/alignment of proposed works.
- d) the tree root map shall be issued to a qualified Structural Engineer as a basis for structural design, and for determining the final location/alignment and construction methodology of proposed works within the tree protection zone.
- e) prior to the issue of a Construction Certificate, the Arborist shall provide certification to the Principal Certifier that the tree root investigation and clear distance recommendations have been adequately addressed in the Construction Certificate plans.

Reason: To ensure protection of vegetation proposed for retention or adjacent to the site.

8. Footing Design Near Trees to be Retained

- a) Pier footing locations shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer, following a tree root investigation by the Arborist near existing tree T2 as identified in the Arboricultural Impact Assessment, to locate critical tree roots and recommend footing design and locations for the construction works.
- b) the Arborist shall review, comment, recommend design revision as required and approve the footing layout, to ensure the locations of footings will be manageable in terms of tree protection measures.
- c) the Arborist shall submit certification to the Certifier, that the locations of the footings are accepted.
- d) the agreed footing structural layout plans shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

9. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Taylor Consulting, drawing number Storm-1 dated 17 October subject to amendment given below. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- All adjustments to public utility services within the public road must be carried out in accordance with the authority's requirements and at the applicant's expense.
- The stormwater pipe across the footpath shall be 100mm galvanized or an equivalent material due to insufficient soil cover. The stormwater plans must be revised accordingly.

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.

10. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 4.0 metres wide in accordance with Northern Beaches Council Standard Drawing Normal low profile 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.

11. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include Civil Engineering plans for the design of the stormwater pipe drainage system within the road reserve which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

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. Tree Removal Within the Property

This consent approves the removal of existing prescribed trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) T3 - *Melaleuca viminalis*,
- 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.

16. Tree Removal Within the Road Reserve

This consent approves the removal of existing trees within the road reserve as identified in the Arboricultural Impact Assessment, or as listed below:

- a) T4 - *Eucalyptus botryoides*,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor, as engaged by the applicant. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

17. 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

18. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages in accordance with Section 4 of AS4970-2009 Protection of trees on development sites.

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

Reason: Street tree protection.

19. Tree and Vegetation Protection

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

- i) all trees and vegetation located on adjoining properties,
- ii) all trees and vegetation within the road reserve unless approved for removal.

b) Tree protection shall be undertaken as follows:

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

shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

20. **Road Reserve**

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

Reason: Public safety.

21. **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.

22. **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.

23. **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.

24. 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.

25. Property Boundary Levels

The Applicant is to maintain the property boundary levels unless approved by Council. 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.

26. 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**27. Landscape Completion**

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

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans, unless otherwise imposed by conditions,
- c) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within

garden bed or within a prepared bed within lawn,
 d) of the nominated tree planting, one shall be a replacement *Melaleuca viminalis*,
 e) the nominated Bamboo species shall be managed to a maximum 3.5 metres in height,
 f) mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
 g) the nominated *Rhapiolepis* species shall be replaced with a non self-seeding species of similar size and form,
 h) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

28. Condition of Retained Vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

29. 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.

30. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor), and Civil Engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be

submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

31. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

32. **Landscape Maintenance**

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

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

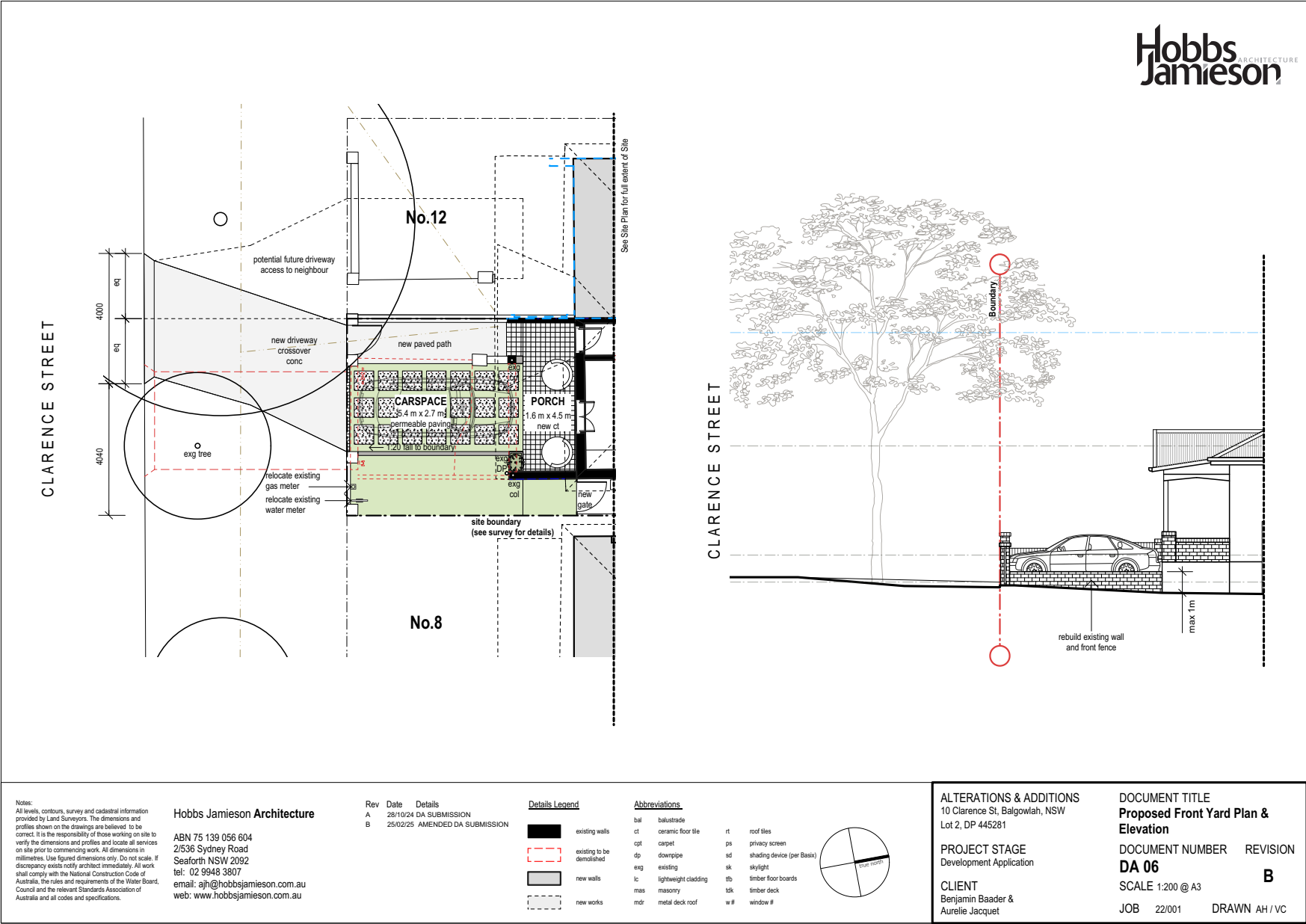
Reason: To maintain local environmental amenity.

33. **Geotechnical Recommendations**

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

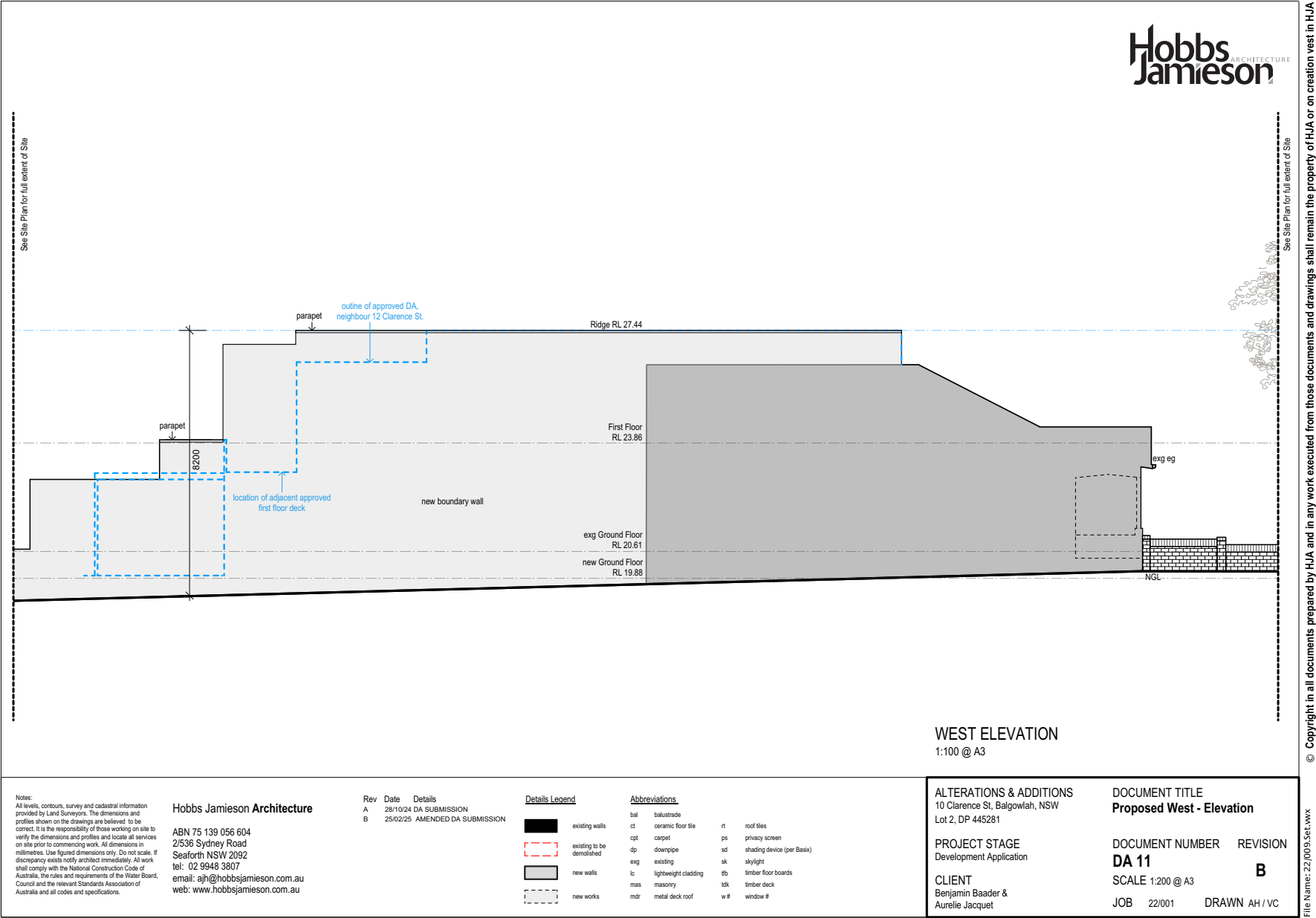
Reason: To ensure geotechnical risk is mitigated appropriately.

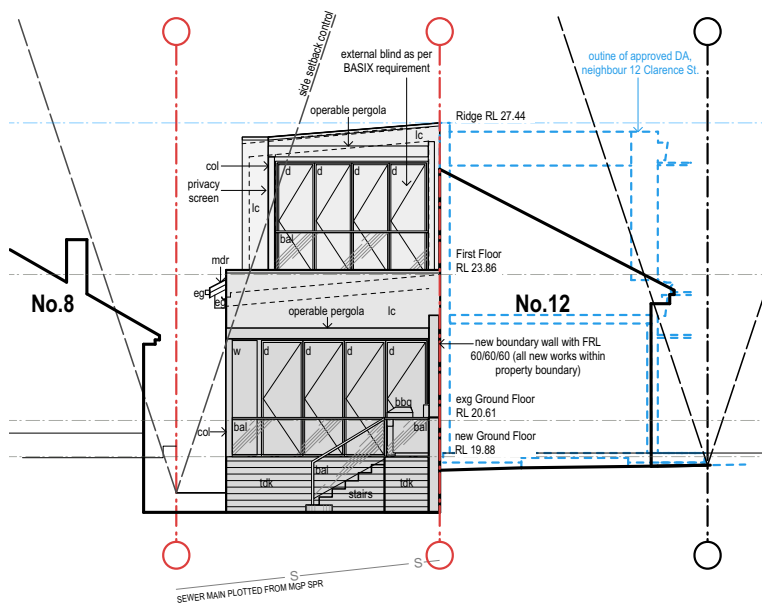




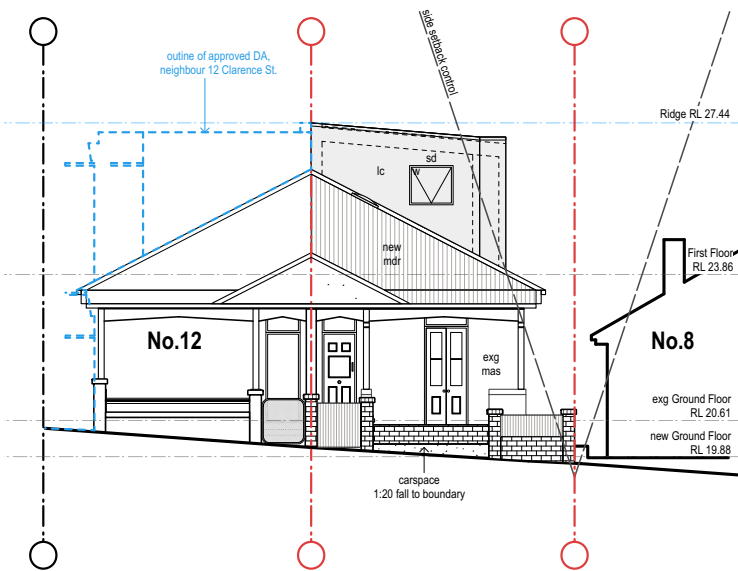


File Name: 22/009.Set.vwx





NORTH ELEVATION - REAR VIEW
1:100 @ A3



SOUTH ELEVATION - STREET VIEW
1:100 @ A3

Notes:
All levels, contours, survey and cadastral information provided by Land Surveyors. The dimensions and profiles shown on the drawings are believed to be correct. It is the responsibility of those working on site to verify the dimensions and profiles and locate all services on site prior to commencing work. All dimensions in millimetres. Use figured dimensions only. Do not scale. If discrepancy exists notify architect immediately. All work shall comply with the National Construction Code of Australia, the rules and requirements of the Water Board, Council and the relevant Standards Association of Australia and all codes and specifications.

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Rev	Date	Details
A	28/10/24	DA SUBMISSION
B	25/02/25	AMENDED DA SUBMISSION

Details Legend

	existing walls
	existing to be demolished
	new walls
	new works

Abbreviations

bal	balustrade	rt	roof tiles
ct	ceramic floor tile	ps	privacy screen
cpt	carpet	sd	shading device (per Basix)
dp	downpipe	sk	skylight
exg	existing	tbb	timber floor boards
lc	lightweight cladding	tdk	timber deck
mas	masonry	w#	window #
mdr	metal deck roof		

ALTERATIONS & ADDITIONS
10 Clarence St, Balgowlah, NSW
Lot 2, DP 445281

PROJECT STAGE
Development Application

CLIENT
Benjamin Baader &
Aurelie Jacquet

DOCUMENT TITLE
**Proposed North & South -
Elevation**

DOCUMENT NUMBER
DA 12

SCALE 1:200 @ A3

JOB 22/001 DRAWN AH / VC

Development Application DA2024/1651
Updated Clause 4.6 variation request – FSR
Alterations and additions to a semi-detached dwelling
10 Clarence Street, Balgowlah
4.3.25

1 Updated Clause 4.6 variation request - Floor space ratio

1.1 Introduction

This updated clause 4.6 variation request has been prepared in support of the amended architectural plans Revision B prepared by Hobbs Jamieson Architecture.

This clause 4.6 variation has been prepared in relation to an application seeking alterations and additions to the existing dwelling house at 10 Clarence Street, Balgowlah and 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.

1.2 Manly Local Environmental Plan 2013 (MLEP 2013)

1.2.1 Clause 4.4 – Floor Space Ratio

Pursuant to clause 4.4 in the LEP, the site has a maximum floor space ratio (FSR) control of 0.45:1. Based on a site area of 332.6m² the maximum GFA for development on the land is 149.67m². The objectives of the FSR control are as follows:

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

It has been determined that the proposal result in a total gross floor area on the site of 186.9m². This represents a floor space ratio of 0.56:1 and therefore non-compliant with the FSR standard by 37.23m² or 24.8%.

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 “I” in which a minimum Lot area of 500m² is required. The site having an area of only 332.6m² is well below the minimum Lot area provision and accordingly the clause 4.1.3 Manly DCP FSR variation provisions apply.

Clause 4.1.3.1 states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 of the LEP is to be no greater than the achievable gross floor area for the lot indicated in Figure 30 of the DCP. We confirm that pursuant to Figure 30 the calculation of FSR is to be based on a site area of 500m² with an achievable gross floor area of 225m².

In this regard, the 186.9m² of gross floor area proposed, representing an FSR of 0.373:1 (based on 500m²), is below the maximum prescribed gross floor area of 225m² 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) | <i>To ensure the scale of development does not obscure important landscape features.</i> |
| Objective 2) | <i>To minimise disruption to views to adjacent and nearby development.</i> |
| Objective 3) | <i>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.</i> |

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.*

We also note that a degree of flexibility in relation to FSR on undersize lots has recently been applied by the Land and Environment Court of New South Wales in its approval of DA2022/0727 involving alterations and additions to the adjoining dwelling in the pair at 12 Clarence Street, Balgowlah with the proposed FSR identical to that approved on this adjoining site.

1.2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP 2013 provides:

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 clause 4.6(3).

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

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

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

Clause 4.6(2) of MLEP 2013 provides:

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 floor space ratio development standard in clause 4.4 of MLEP 2013.

Clause 4.6(3) of MLEP 2013 provides:

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 development standard at clause 4.4 of MLEP 2013 which specifies a maximum floor space ratio of 0.45:1. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

1.3 Relevant Case Law

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

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].

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].

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].

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].

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.

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

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

1. Is clause 4.4 of MLEP 2013 a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard

1.4 Request for variation

1.4.1 Is clause 4.4 of MLEP 2013 a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (d) *the cubic content or floor space of a building,*

Clause 4.4 of MLEP 2013 prescribes a bulk and scale provision that seeks to control the floor space ratio of certain development. Accordingly, clause 4.4 of MLEP 2013 is a development standard.

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

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. The first approach is relevant in this instance, being that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the floor space ratio development standard

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

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

Comment: The proposed additions are well articulated, with a height, bulk and scale that is appropriately responsive to that of surrounding and nearby development including that recently approved by the Land and Environment Court of New South Wales pursuant to DA2022/0727 involving alterations and additions to the adjoining dwelling in the pair at 12 Clarence Street, Balgowlah. The massing of the building is consistent and compatible with that of other development along Clarence Street with the single storey built form presentation maintained at the street frontage and the first floor additions setback and recessive elements in a streetscape context.

Council can be reasonably satisfied that the bulk and scale of the proposed development, as expressed as a floor space ratio, is consistent with the existing and desired character of the area. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191*, I have formed the considered opinion that most observers would not find the proposed development by virtue of its bulk and scale (FSR) offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the visual catchment of the site.

This objective is achieved notwithstanding the non-compliant floor space proposed.

- (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: Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 186.9m² of gross floor area proposed, representing an FSR of 0.373:1 (based on 500m²), is below the maximum prescribed gross floor area of 225m² 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.

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

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

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

Comment: As previously indicated, consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191*, I have formed the considered opinion that most observers would not find the proposed development by virtue of its bulk and scale (FSR) offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the visual catchment of the site including that recently approved by the Land and Environment Court of New South Wales pursuant to DA2022/0727 involving alterations and additions to the adjoining dwelling in the pair at 12 Clarence Street, Balgowlah.

The proposed development is compatible with the existing streetscape and the character of the wider R2 Low Density Residential zone both in terms of building form and landscape outcomes. This objective is achieved notwithstanding the non-compliant FSR proposed.

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

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

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

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

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

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

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

That said, it has previously been determined that the proposal achieves objective (a) of the clause 4.4 MLEP FSR standard namely to ensure the bulk and scale of development is consistent with the existing and desired streetscape character. Accordingly, I am satisfied that the development, notwithstanding the FSR non-compliance, maintains an appropriate visual relationship between new development and the existing built form character of the area.

In relation to landscape character, the additional floor space does not require the removal of any significant trees or vegetation with a compliant quantum of landscaped area maintained. The building will sit within a landscaped setting. 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.

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

Comment: Not Applicable.

The non-compliant development, as it relates to floor space ratio, demonstrates consistency with objectives of the floor space ratio development standard. Adopting the first option in *Wehbe*, strict compliance with the floor space ratio development standard has been demonstrated to be unreasonable and unnecessary in the circumstances of this application.

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

In *Initial Action* the Court found at [23]-[25] that:

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

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

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

Sufficient environmental planning grounds

I have formed the opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment including that recently approved by the Land and Environment Court of New South Wales pursuant to DA2022/0727 involving alterations and additions to the adjoining dwelling in the pair at 12 Clarence Street, Balgowlah. The proposed FSR is identical to that approved for the adjoining property.

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

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

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

Support of a variation generally consistent with recent development consents issued by Council and the Court on undersized allotments is consistent with Object 1(c) of the EP&A Act, in so far as it reflects the orderly development of the land and promotes consistency in the decision-making process.

Overall, there are sufficient environmental planning grounds to justify contravening the development standard.

1.5 Conclusion

Pursuant to clause 4.6(4)(a) of MLEP 2013, the consent authority can be satisfied that this 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 floor space ratio variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director

ITEM 3.6	DA2024/1730 - 28 WANGANELLA STREET BALGOWLAH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
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PURPOSE

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

RECOMMENDATION

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 & 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 DA2024/1730 for alterations and additions to a dwelling house on land at Lot 1 DP 790190, 28 Wanganella Street, Balgowlah, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2025/146734
Attachments	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6 - HOB 4 Clause 4.6 - FSR

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1730
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Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 1 DP 790190, 28 Wanganella Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Warrick Bruce McLean

Application Lodged:	20/12/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/01/2025 to 27/01/2025
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 1.76% 4.4 Floor space ratio: 13.71%
Recommendation:	Approval

Estimated Cost of Works:	\$ 564,000.00
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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 application proposing a greater than 10% variation to the Floor Space Ratio (FSR) development standards.

No submissions were received.

Critical assessment issues relate to height of buildings, FSR, setbacks and wall height. These issues have been addressed within the assessment report.

The written Clause 4.6 request for the non-compliance with the FSR standard is associated with a 4.59m² increase in floorspace under this application. The additional floorspace is within the existing building footprint and does not increase the bulk and scale of the building.

The Clause 4.6 request for the non-compliance with height standard arises from the inclusion of a roof over the proposed balcony, which results in a 1.76% variation. The proposal is below the height of the existing roof height of the building.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for alterations and additions to a dwelling house. The works include the following:

Proposed Ground Floor - Alterations and Additions:

- Reconfigured deck with BBQ area,
- Open kitchen and dining with new butlers pantry,
- Bathroom,
- WC.

Proposed First Floor – Alterations and Additions:

- Study,
- Bed 2 (existing) with ensuite (proposed),
- Bed 3 with ensuite and WIR,
- Reconfigured deck.

Proposed External Works:

- Spa to be demolished/removed,
- External northern stair with under stair storage to replace existing,
- Garage door awning (pedestrian access),
- Reconfigured roofline.

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 - 4.3 Height of buildings
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly 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
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 1 DP 790190 , 28 Wanganella Street BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of one corner allotment located on the north-east corner of Wanganella Street and Upper Beach Street. The site is regular in shape with a frontage of 11.59m along Wanganella Street and 22.37m along Upper Beach Street. The site has a surveyed area of 390m². The site is located within the R1 General Residential zone and accommodates a two/three storey dwelling with attached garage. The site slopes down from the western front boundary to the north eastern corner of the site. The site has trees and shrubs along the boundaries and a small area of lawn along the Wanganella Street frontage. There are no known threatened species on the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one to three storey residential dwellings of a similar architectural style.

Site Inspection

A site inspection was undertaken 4 January 2025.

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	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning	None applicable.

Section 4.15 Matters for Consideration	Comments
agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <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>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 13/01/2025 to 27/01/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments	
Strategic and Place Planning (Heritage Officer)	SUPPORTED, No recommended conditions	
	HERITAGE COMMENTS	
	Discussion of reason for referral	
	This application has been referred as it is in the vicinity of a heritage item, being: Item I22 - Street trees - Seaview Street (from New Street to Upper Beach Street), Balgowlah , listed in Schedule 5 of Manly LEP 2013.	
	Details of heritage items affected	
	Details of the heritage item in the vicinity, as contained within the Heritage Inventory, are: Item I22 - Street trees - Seaview Street (from New Street to Upper Beach Street), Balgowlah	
	<u>Statement of Significance</u> A good example of a line of street planting.	
	<u>Physical Description</u> Brush Box and Ficus Hillii street trees.	
	Other relevant heritage listings	
	SEPP (Biodiversity and Conservation) 2021	No Comment if applicable
	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	

Internal Referral Body	Comments
	This application proposes alterations and additions to the existing multi storey dwelling house. The alterations are largely internal, however propose an increased deck at ground level along with an extension of the eastern side of the 1st floor to incorporate a deck area. This property is located approximately 40 metres from Seaview Street and the first heritage street tree is located a further 20 metres south. As there is significant separation between the proposed works and the heritage trees, there will be no impact on this heritage item in the vicinity, as a result of this proposal. Therefore, no objections are raised on heritage grounds and no conditions required. <u>Consider against the provisions of CL5.10 of MLEP 2013:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A

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. A1766292 dated 26 September 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.65m	1.76%	No
Floor Space Ratio	FSR: 0.5:1 (195m ²)	FSR: 0.57:1 (221.74m ²)	13.71%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment**Zone R1 General Residential**

The underlying objectives of the R1 General Residential zone:

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

Comment:

The proposed works retain the residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

The proposal provides additional rooms to accommodate varying housing needs of a residential dwelling.

It is considered that the development satisfies this objective.

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

Comment:

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

It is considered that the development satisfies this objective.

4.3 Height of buildingsDescription of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m

Proposed:	8.65m
Percentage variation to requirement:	1.76%

4.3 Height of buildings

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

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

The proposed building height and roof form are consistent with the topography and prevailing building heights and streetscape character. The proposed development will be retaining the established roof height of the building, with the extension to the first floor lower than the existing building height. The roof form will be generally consistent with the existing building and surrounding, development in the vicinity. The dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies and eaves to break up built form.

b) to control the bulk and scale of buildings,

Comment:

The proposed dwelling house is acceptable with respect to the proposed variation to the Height of buildings development standard and all built form controls under the MDCP, including setbacks and wall heights. Additionally, the proposed development includes acceptable total open space and landscaped area. This demonstrates the dwelling is of a bulk and scale anticipated for the subject site by the controls, and that the footprint of the dwelling is not excessive.

c) to minimise disruption to the following—

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

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

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

Comment:

The proposed development is designed and sited so as not to result in any unreasonable view loss to or from public or private land.

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

Comment:

The proposed development is acceptable with respect to the requirements of Clauses 3.4.1 Sunlight Access and Overshadowing and 3.4.2 Privacy and Security of the MDCP, as detailed in the relevant sections of this report.

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 within a recreation or environmental protection zone.

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.5 to 1
Proposed:	0.5 to 7
Percentage variation to requirement:	13.71%

4.4 Floor space ratio

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

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

Comment:

The proposed development, despite its non-compliance with a number of built form controls, is of a bulk and scale consistent and compatible with surrounding developments.

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

Comment:

The proposed development is designed and sited so as not to obscure 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,

Comment:

The works demonstrate a suitable balance between the existing built form and landscape character of the locality.

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

Comment:

The proposed works do not result in any unreasonable environmental impact, and do not impact upon enjoyment or use of adjoining land.

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

Comment:

Not applicable. The subject site is zoned as R1 General Resident.

4.6 Exceptions to development standards**(i) BUILDING HEIGHT**

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

Development standard: Clause 4.3 Height of buildings

Requirement: 8.5m

Proposed: 8.65m

Percentage of variation: 1.76%

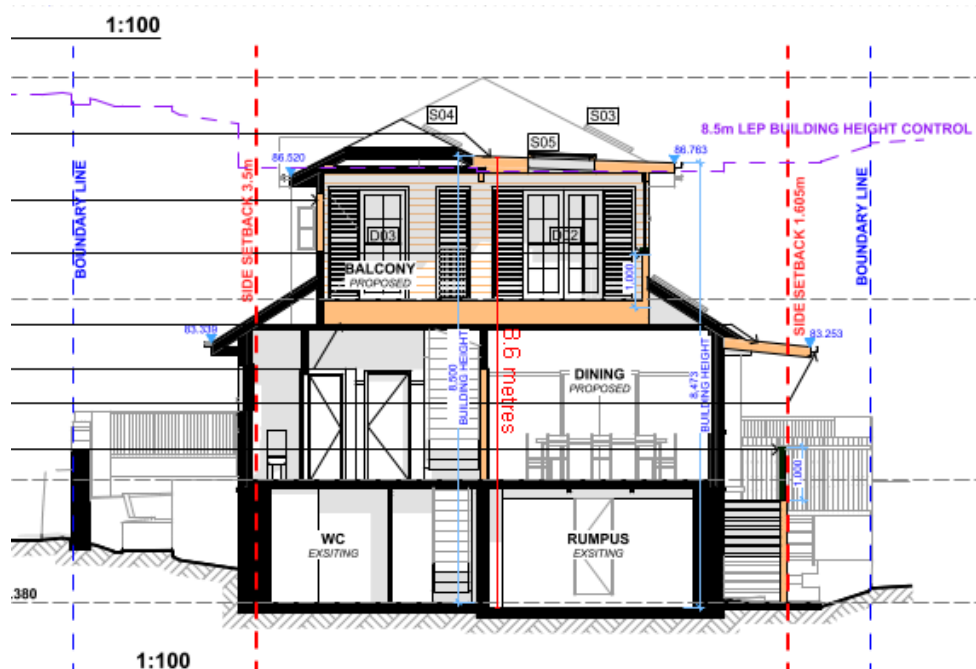


Figure 1: Building height non-compliance highlighted in red.

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

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.3 Height of buildings is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

'It is acknowledged that the proposed development does not comply with clause 4.3 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the MLEP2013 and demonstrates that compliance with the provisions of clause 4.3 (2) is both unreasonable and unnecessary and the proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.

The development standard in Clause 4.3 (2) of the MLEP2013, is amendable to variation. The purpose of this Clause 4.6 is to vary the Height of Building as a building height referable to the building to give Council the power to grant development consent to the non-compliant purposes.'

'Despite the variation to the Height of Building control which occurs as a result of the topography of the land, the proposed development is considered to be in keeping with the desired future character of the locality. The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project designer has worked tirelessly to design through alterations and additions a modern high-end development that meet the sites constraints and the existing bulk and scale of the area; therefore, the proposal will not result in any unreasonable visual impact on the Upper Beach Street and Wanganella Street streetscapes.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under MLEP2013 and the provisions of Clause 4.6 which permit a variation to a development standard. It is noted it is consistent with the approval granted through the case Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582 is that the distorted height plane creates reasonable environmental planning ground that justifies the contravention of the height standard.

In determining the building heights of the development, it is important to understand the definitions of building height and ground level (existing) and also relevant case law from the NSW Land and Environment Court. The court now considers the definition of "ground level (existing)" Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, which insists that the ground level (existing) is measured from the excavated ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an 'environmental planning ground' that may justify the contravention of the height standard under 'clause 4.6' when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. This falls hand in hand with the original leading cases Bettar v Council of the City of Sydney [2014] NSWLEC 1070 and Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189.

It is noted that common-sense should prevail from the new court case "Merman Investments Pty Ltd" with the fact that many height planes are now going to be distorted creating an argument which goes hand in hand with the original court cases relating to the extrapolated levels of a site through 'Bettar'.

As a result of the above, it is determined that the maximum building above ground level (existing) is 8.65m for the proposed development. This results in a 0.15m variation or 1.76%. The Development

Application is supported by a Clause 4.6 Variation to Development Standard report. It is noted that the building height existing is 9.87m with the proposed works well under the existing ridge lines. It is noted that the breach is the result of the sloping nature of the site, several existing man-made level changes which distort the existing ground level and the existing man-made changes. If the natural ground level was applied, the proposed variation would be consistent with other approvals granted in the area and would comply with the 8.5m height allowance. Regardless, the natural topography of the site and the existing building (which is already non-compliant) makes compliance with the building height impractical, and therefore unreasonable for Council to enforce. The bulk and scale and appearance of the dwelling is retained to Upper Beach Street.'

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

1. *Historical excavation and site disturbance*
 2. *Topography of the site*
 3. *Existing Building Height*
 4. *Characterisation of the development*
 5. *Streetscape Appearance*
- *The sites topography and existing man-made excavation distorts the height plane for the site. If the natural ground level was taken, the proposal would comply with the building height control.*
 - *The proposed development responds to the existing and desired future character of the locality. Furthermore, the subject proposed dwelling through alterations and additions retains the building footprint and in majority the height existing on the site. It's our opinion that the proposal will integrate into the existing streetscape and pattern of development within Wanganella Street and Upper Beach Street.*
 - *The development does not result in any unnecessary or undue bulk or visual impacts on adjoining properties and is of a scale that is compatible with the existing and surrounding buildings.*
 - *The amenity impacts to neighbouring residential properties, arising from the non-compliant building height, is negligible. Adjoining properties will continue to receive suitable solar access, privacy impacts are suitably minimised, and views are reasonably maintained.*
 - *The building height breach is compliant (when assessed from the natural ground level) with the variation relating to only a small portion of the proposed development which will largely be indiscernible when viewed from Upper Beach Street.*
 - *The proposal is consistent with the stance Council has taken on developments within the immediate area noting numerous approvals granted for variations to the building height control.*

- *The building existing has a maximum building height of 9.87m, which the proposed alterations and additions to sit at least a metre below that existing.*

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

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

Public Interest:

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

Conclusion:

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

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

(ii) FLOOR SPACE RATIO

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

Development standard: Clause 4.4 Floor space ratio

Requirement: 0.5:1

Proposed: 0.57:1

Percentage of variation: 13.71%

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:

'It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the FSR of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is in our opinion minor and consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for the existing mixed-use development.

The proposal is consistent with the objectives of Clause 4.4, as outlined below:

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

The proposed works are consistent with height, bulk and scale of adjoining dwellings within the streetscape. The existing façades fronting Wanganella and Upper Beach Street will be preserved with the proposed additions sited behind and below the existing roof ridge line. The site will be enhanced through a new development that has taken into consideration the adjoining properties to the north and east, whilst also understanding the sites constraints. The proposal provides adequate setbacks as required by MDCP. It is our considered opinion that the proposal is consistent with the intent and approvals granted in the area, therefore confirming that the proposal is consistent with the prevailing bulk and scale and the future streetscape of the locality. This is proven with the approvals granted with variations, including the following:

- 22 Violet St Balgowlah – variation 8.1%*
- 27 Violet St Balgowlah – variation 4.3%*
- 31 West St Balgowlah – variation 13.4%*
- 58 Seaview St Balgowlah – variation 6%*
- 7 Ethel St Balgowlah – variation 6.67%*

**Note the list above is a quick review of recent approvals in the immediate area and does not include sites where applications are not available online. It provides relevant justification that the control is unreasonable and unnecessary within the immediate area of the subject site and sufficient environmental planning grounds apply.*

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the bulk and scale of the proposed development, as viewed

from Wanganella and Upper Beach Street, to be offensive, jarring or unsympathetic in a streetscape context. This objective is satisfied, notwithstanding the non-compliant FSR proposed, as the bulk and scale of development is consistent with the existing and desired streetscape character.

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

The development will result in a built form and massing that is of a consistent scale to the existing dwelling and surrounding properties. The development will not obscure any important landscape or townscape features and will not result in any view loss impacts. It is therefore considered this objective is met, despite the numerical variation.

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

The proposed works are visually appropriate for the locality and propose a built form consistent with the existing dwelling. The landscaped area on the property will remain unchanged, as proposed works are located within the existing building footprint. I am satisfied that the development, notwithstanding its FSR non-compliance, achieves the objective as it maintains an appropriate visual relationship between new development and the existing character and landscape of the area.

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

In responding to this objective, I have adopted views, privacy, solar access and visual amenity as environmental factors which contribute to the use and enjoyment of adjoining public and private land. The proposed alterations and additions will not result in any impacts on the use or enjoyment of neighbouring properties or the public areas adjoining the site. It is my professional opinion that the proposal provides a functional building for the new occupants which ensures the amenity and privacy of adjoining properties is maintained.

Privacy

Given the spatial separation maintained between the balance of surrounding properties, and the primary orientation of living areas for the site, I am satisfied that the design, although non-compliant with the FSR standard, minimises adverse environmental impacts in terms of privacy and therefore achieves this objective.

Solar access

The accompanying shadow diagrams demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impacts with compliant levels of solar access maintained to adjoining properties.

Visual amenity/ building bulk and scale

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

It is my considered opinion that the building, notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.

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

Not applicable – the site is located within a residential zone.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing and future character of the area. The proposal is not offensive, or unsympathetic in a streetscape context, and therefore the variation can be supported by Northern Beaches Council.

Having regard to the above, the proposed building form which is non-compliant with the FSR standard will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the FSR standard. This is consistent with the approvals granted with variation and reference under objective (a). Given the developments consistency with the objectives of the FSR standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.'

(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:

'There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

"to achieve better outcomes for and from development by allowing flexibility in particular circumstances."

It should be noted at the outset that in Initial Action the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

Context and Established Precedence

- *The 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 to the existing dwelling house with the main additions sited behind and below the existing roof ridge line where they are not*

offensive in the streetscape context.

- *The existing dwelling is already non-compliant with the proposal shifting the floor space away from the streetscape of Upper Beach Street whilst not impacting the neighbour to the north (noting a 4.26m setback).*
- *Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:*
 - *22 Violet St Balgowlah – variation 8.1%*
 - *27 Violet St Balgowlah – variation 4.3%*
 - *31 West St Balgowlah – variation 13.4%*
 - *58 Seaview St Balgowlah – variation 6%*
 - *7 Ethel St Balgowlah – variation 6.67%*

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 existing floor area of 4.59sqm is considered reasonable as it is located within the existing building footprint and does not result in any unreasonable impacts to neighbouring properties.*
- *The proposed works will not hinder any future development of the lot,*
- *The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).*

Consistent with Zone Objectives

- *The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the existing dwelling and the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.*

Natural Environment

- *The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,*
- *The natural environment is unaffected by the departure to the development standard as the works relates to alterations and additions within the existing building footprint, therefore it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.*

Social and Economic Welfare

- *The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in the dedicated home offices. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable*

Appropriate Environmental Planning Outcome

- *The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.*

Having regard to Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, and further to the proposal's consistency with the above strategic and statutory environmental planning provisions, the proposal is consistent with the following objectives under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

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

The above environmental planning grounds are not general propositions, they are unique circumstances to the proposed development. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed floor space ratio non-compliance in this instance.'

Planner's Comments:

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

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

Public Interest:

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

Conclusion:

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

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

Mainly Development Control PlanBuilt Form Controls

Built Form Controls - Site Area: 390m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 7m (based on gradient 1:12)	8 - 7.8m	14 - 11%	No
4.1.2.2 Number of Storeys	2	2/3	N/A	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.2m	N/A	Yes
	Pitch: maximum 35 degrees	6 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	6.1m,	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.3m (based on wall height)	1.6m	56.2%	No
	Windows: 3m	2.8m	6.7%	No
	Secondary street frontage: Prevailing setback: 1.2m	4.1m, consistent with prevailing setback	N/A	Yes - no change
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (214.5m ²) of site area	50.7% (197.8m ²)	7.9%	No
	Open space above ground 25% (49.45m ²) of total open space	22.58% (44.6m ²)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (69.2m ²) of open space	51.1% (101.19m ²)	N/A	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	23.69m ²	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	No change	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4.1 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
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	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 of the MDCP stipulates that the maximum wall height permitted on the northern elevation is 7m. The application proposes a wall height of 7.8 - 8m. This is consistent with the existing wall height along the northern elevation.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the MLEP. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the variation is deemed to be reasonable and supported in this 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 stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the height of the building. The wall height of the northern façade requires a side setback of 2.3m. The proposed ground floor deck is setback 1.6m from the north and east side boundary, presenting a variation of 56.2% to the clause requirements.

The control allows for projections into the side setback for unenclosed balconies, roof eaves, sun-hoods, and the like, if it can demonstrate there will be no adverse impact on adjoining properties including loss of privacy from a deck or balcony. The proposed deck generally complies with this requirement. However, the reduced setback to the eastern boundary will allow for views of the swimming pool area of the adjoining property to the north at no. 30 Wanganella Street (see below photo). A condition is recommended requiring a 1.5m high privacy screen along the northern edge of the deck to limit views of the adjoining property.



Photo 1: view from existing balcony looking over the rear yard of no. 30 Wanganella Street.

Clause 4.1.4.6 of the DCP stipulates that all new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries. The proposed ground floor bathroom window is setback 2.8m from the southern side boundary, which is non-compliant with the

control.

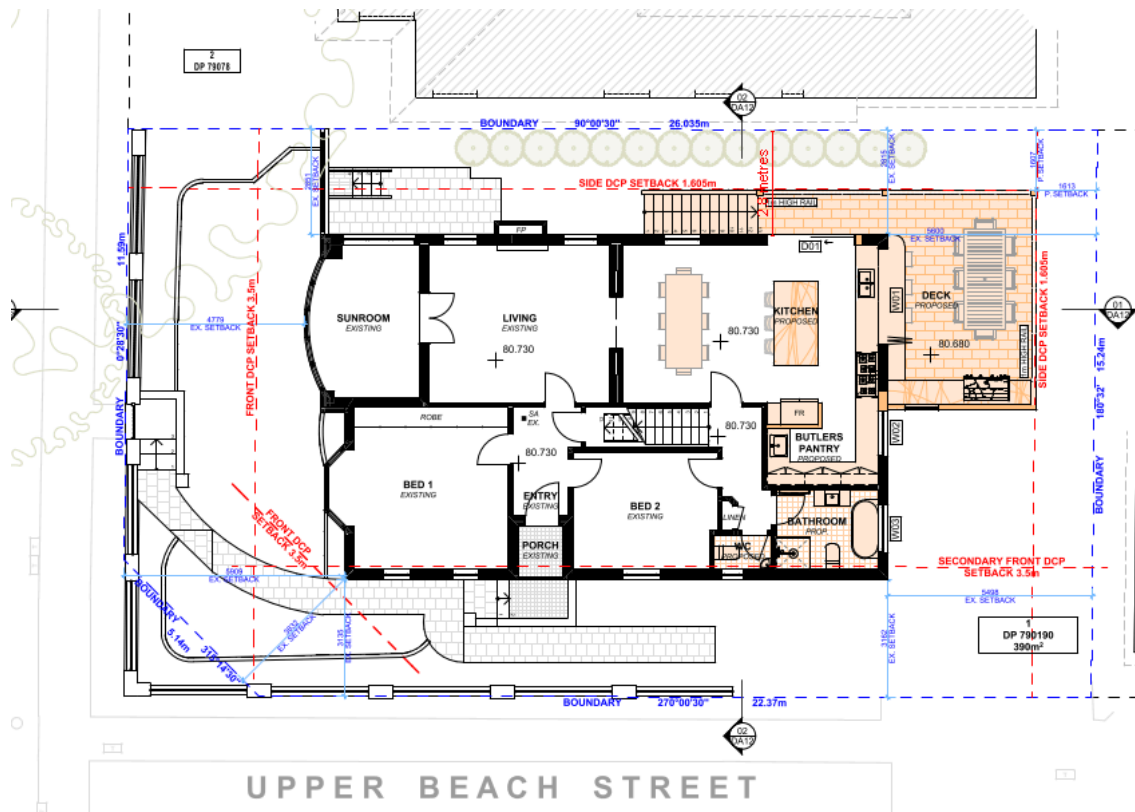


Figure 2: Ground floor front and side setbacks.

Merit consideration:

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

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

Comment:

The proposed development is consistent with the character of the existing semi-detached dwellings and other dwellings observed in the immediate vicinity. The proposal will provide landscaping at the front of the site to maintain the landscape character of the streetscape. The works suitably retain the existing proportions and pattern of built form and landscape character along Wanganella Street.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*

- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

Subject to the proposed privacy screen along the northern edge of the ground floor deck, the development is considered to provide reasonable amenity including privacy, solar access and view sharing for the dwelling occupants and those of adjoining and surrounding properties. The development is also considered to appropriately respond to the site constraints and prevailing pattern of development seen within the vicinity of the site. The proposal will not preclude safe and adequate traffic conditions or detract from the character of the streetscape. Overall, the proposal achieves this objective.

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

Comment:

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

Objective 4) To enhance and maintain natural features by:

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

Comment:

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

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

Comment:

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

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The control requires at least 55% of the site to consist of total open space (TOS). To be included as TOS open space areas must be at least 3x3m in dimension and must not relate to parking structures or vehicular access (i.e. the driveway and hardstand parking space with carport above is excluded).

The application proposes 50.7% (197.8m²) of the site as TOS, which does not satisfy the numeric requirement.

Merit consideration:

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

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

Comment:

No vegetation is proposed to be removed as the works are within the existing building footprint and over existing hard surface area.

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

Comment:

The proposed development includes deep soil landscaped areas along the front of the dwelling to ensure an appropriate landscaping outcome. No significant vegetation on the site is proposed to be removed.

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

Comment:

The proposed development does not result in unacceptable amenity impacts, specifically with regard to view sharing, solar access, privacy and visual bulk. Sufficient TOS is provided elsewhere on the site, to meet the recreational needs of the occupants of the dwelling.

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

Comment:

The site contains sufficient pervious areas to assist in water infiltration, in turn minimising stormwater runoff. Furthermore, suitable conditions have been included with this consent to ensure that stormwater is managed and disposed of in an acceptable manner.

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

Comment:

The proposal will not lead to a significant spread of weeds.

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

Comment:

The proposed development does not have an adverse impact upon wildlife corridors.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of \$5,640 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$564,000.

CONCLUSION

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

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

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

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

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

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

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

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/1730 for Alterations and additions to a dwelling house on land at Lot 1 DP 790190, 28 Wanganella Street, BALGOWLAH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA03	A	Site Analysis	Action Plans	07.11.2024
DA04	A	Site / Roof / Sediment Erosion / Waste management / Stormwater Concept Plan	Action Plans	07.11.2024
DA05	A	Existing Lower Ground Floor Plan	Action Plans	07.11.2024
DA06	A	Existing Ground Floor Plan	Action Plans	07.11.2024
DA07	A	Existing First Floor Plan	Action Plans	07.11.2024
DA08	A	Proposed Lower Ground Floor Plan	Action Plans	07.11.2024
DA09	A	Proposed Ground Floor Plan	Action Plans	07.11.2024
DA10	A	Proposed First Floor Plan	Action Plans	07.11.2024

DA11	A	North / East Elevation	Action Plans	07.11.2024
DA12	A	South / West Elevation	Action Plans	07.11.2024
DA13	A	Long / Cross Section	Action Plans	07.11.2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Preliminary Geotechnical Assessment	Ref: AG 24506	AscentGeo Geotechnical Consulting	25.11.2024
BASIX Certificate	Certificate number: A1766292	ACTION PLANS PTY LTD	26.09.2024

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	09/01/2025

(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.

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.

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$5,640.00 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 \$564,000.00.

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

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

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

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

5. **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

6. **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.

7. Amendments to the approved plans

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

- A 1.5 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost northern edge of the Ground Floor deck located off the Kitchen as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

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

8. 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.

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:

- “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

11. 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

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

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

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

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

13. **Demolition Works - Asbestos**

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

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

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

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

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

14. **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.

15. **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.

16. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance

with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

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

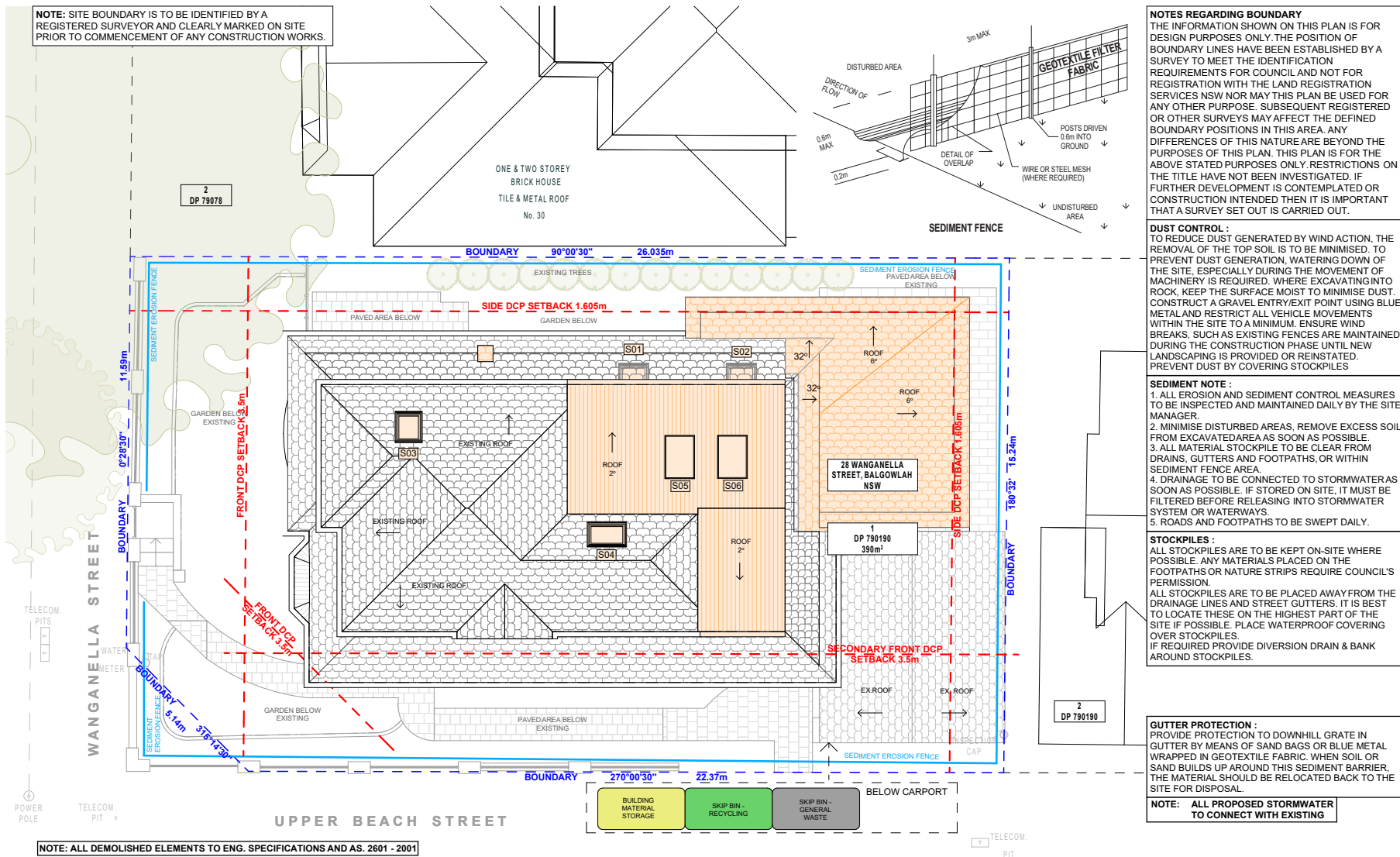
BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

17. **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.

ATTACHMENT 2 : SITE PLAN & ELEVATIONS - ITEM 3.6 - DEVELOPMENT DETERMINATION PANEL - 26 MARCH 2025



ACTION PLANS

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

REV.	DATE	COMMENTS	DRWN
A	07.11.2024	DEVELOPMENT APPLICATION	CA

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The Builder/Contractor/owner is to ensure that the approved boundary sheets and approved levels are confirmed and set out by a registered Surveyor prior to construction, the boundary sheets 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/client and referred to the designer prior to the commencement of works.

LEGEND

- LEGEND**
- | | | | |
|---|---------------|---|--------------|
|  | EXISTING |  | TILED FLOOR |
|  | DEMOLISHED |  | TIMBER FLOOR |
|  | METAL ROOFING |  | BRICKWORK |
|  | TILED ROOFING | | |
|  | TIMBER STUD | | |

CLIENT
Warrick & Greta Mclean

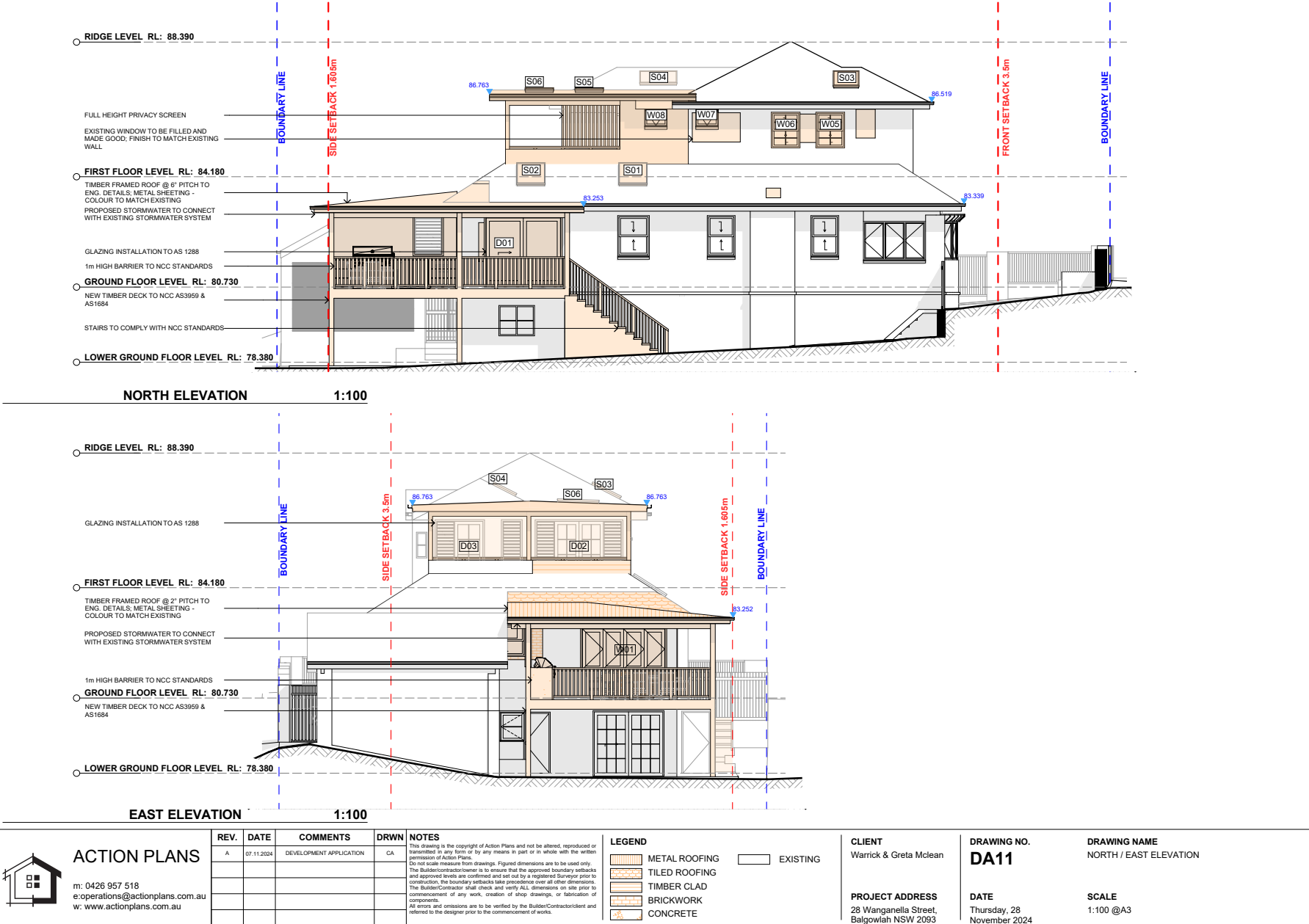
PROJECT ADDRESS
28 Wanganella Street,
Balgowlah NSW 2093

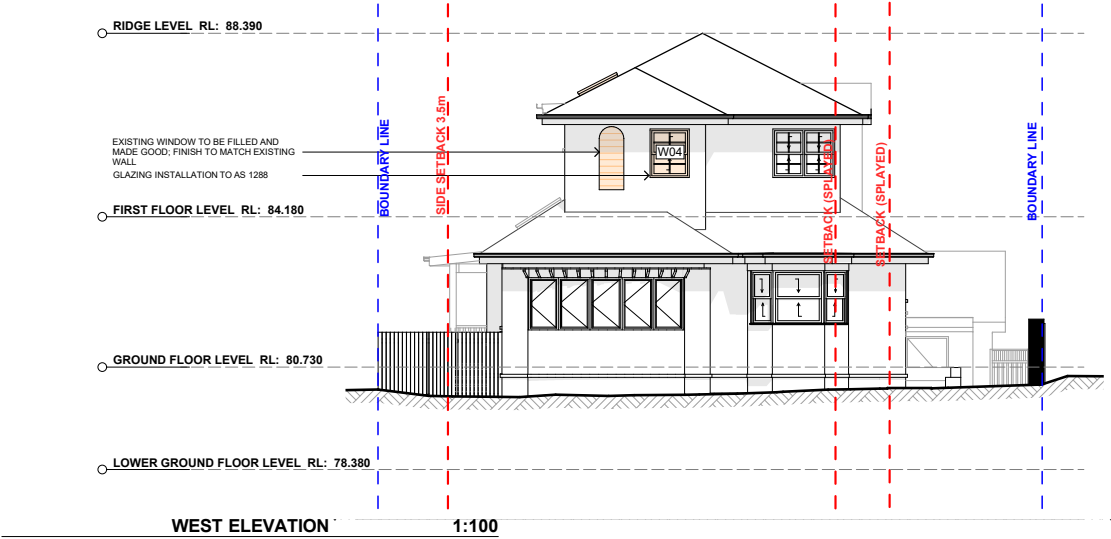
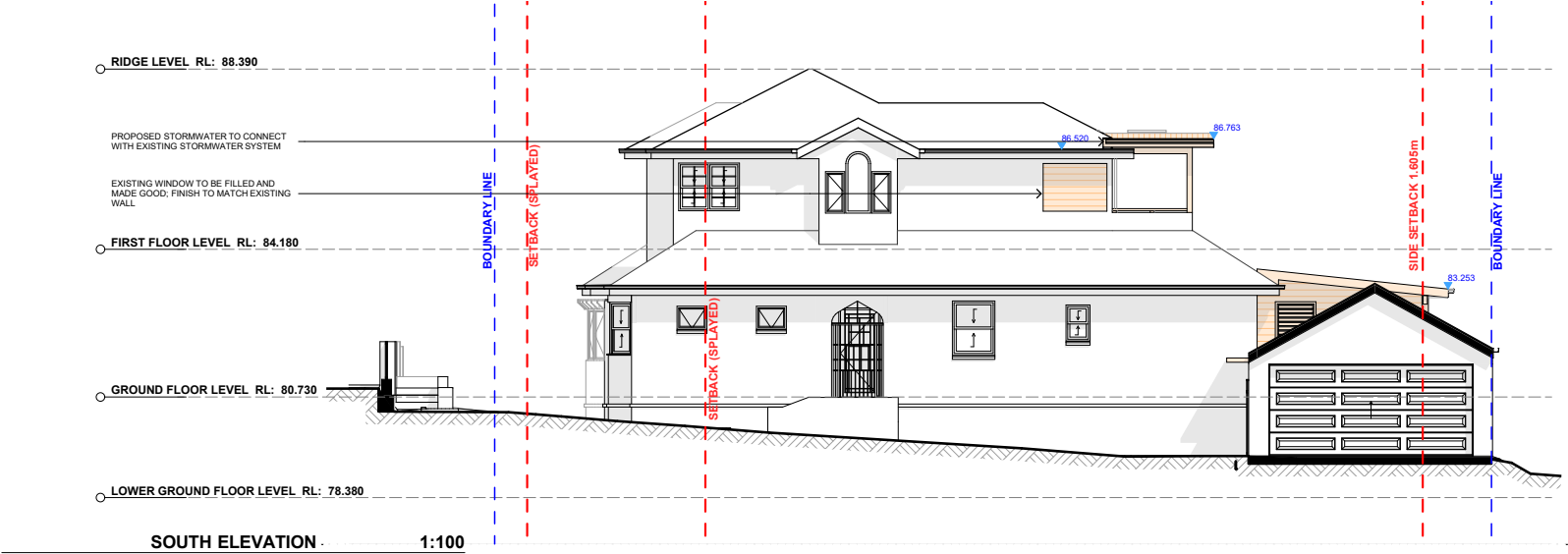
DRAWING NO.
DA04

DATE
Thursday, 28
November 2024

DRAWING NAME
SITE / ROOF / SEDIMENT
EROSION / WASTE
MANAGEMENT / STORMWATER
CONCEPT PLAN
SCALE
1:100 @A3







ACTION PLANS

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REV.	DATE	COMMENTS	DRWN
A	07.11.2024	DEVELOPMENT APPLICATION	CA

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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	
	METAL ROOFING
	TILED ROOFING
	TIMBER CLAD
	BRICKWORK
	CONCRETE
	EXISTING

CLIENT
Warrick & Greta Mclean

PROJECT ADDRESS
28 Wanganella Street,
Balgowlah NSW 2093

DRAWING NO.
DA12

DATE
Thursday, 28
November 2024

DRAWING NAME
SOUTH / WEST ELEVATION

SCALE
1:100 @A3



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

**VARIATION OF A DEVELOPMENT
STANDARD REGARDING HEIGHT OF
BUILDINGS AS DETAILED IN CLAUSE 4.3
OF MANLY LOCAL ENVIRONMENTAL
PLAN 2013**

**Alterations and Additions to Existing
Dwelling House and Associated Works**

**28 Wanganella Street,
Balgowlah NSW 2093**

✉ mathew@fourtowns.com.au

☎ 0425232018

www.fourtowns.com.au

PO Box 361, Balgowlah NSW 2093

Alterations and Additions to Existing Dwelling House 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:

Warrick and Greta McLean

10 December 2024

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 Dwelling House and Associated Works

Introduction

This written request under Clause 4.3 of the Manly Local Environmental Plan 2013 (**MLEP 2013**) accompanies a Development Application seeking consent for alterations and additions to the existing dwelling house and associated works at 28 Wanganella Street, Balgowlah, being Lot 1 within Deposited Plan 790190.

The written request is made pursuant to Clause 4.6 MLEP 2013 and requests a variation to height of buildings as detailed under Clause 4.3 of Manly Local Environmental Plan 2013.

Clause 4.3 of MLEP 2013 notes:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The site has a maximum building height provision of 8.5m. The proposal will result in a maximum height of 8.65m. It is noted that the breach is the result of the sloping nature of the site, the existing building height and building footprint, which results in existing man-made changes.

The proposed works are reasonable within the context of the site and surrounding development and will not result in excessive bulk and scale. It is submitted that there is more than enough justification and precedence within the area to support the breach.

The following assessment of the variation to Clause 4.3 – Building Height development standard, has taken into consideration the recent judgement contained within Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

In this regard, it is requested Council support a variation with respect to compliance with the maximum height of buildings as described in Clause 4.3 of the MLEP 2013. The nature and extent of the contravention is as follows:

Requirement	8.5m
Proposed	8.65m
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	1.76%

Manly Local Environmental Plan 2013**2.1 Clause 2.2 and the Land Use Table**

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned R1 – General Residential (the R1 zone) and the Land Use Table in Part 2 of MLEP 2013 specifies the following objectives for the R1 zone:

Alterations and Additions to Existing Dwelling House and Associated Works

- **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 Balgowlah area.

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

Comment: Not applicable – the proposal is for a permissible residential land use on the site.

2.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) MLEP 2013 provides:

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

The latest authority in relation to the operation of clause 4.6 is the decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“*Initial Action*”). *Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

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

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

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

Clause 4.6(2) of MLEP 2013 provides:

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

Clause 4.3 is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the MLEP 2013.

Clause 4.6(3) Of MLEP provides:

- (3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

Alterations and Additions to Existing Dwelling House and Associated Works

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

The proposed development does not comply with the prescribed height of buildings for residential accommodation in the Zone R2, as prescribed under Clause 4.3 of the MLEP 2013, however strict compliance is unreasonable or unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

3. Relevant Caselaw

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, *Wehbe v Pittwater Council (2007) 156 LGERA 446*; [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

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

1. Is Clause 4.3 of MLEP 2013 a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard?

4. Request for Variation

4.1 Is Clause 4.3 of MLEP 2013 a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:

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

- (b) Clause 4.3 relates to the height of building. Accordingly, Clause 4.3 is a development standard.

4.2 Is compliance with Clause 4.3 unreasonable or unnecessary?

This request relies upon the First method identified by Preston CJ in *Wehbe*. The first way in *Wehbe* is to establish that the objectives of the standard are achieved.

In determining a merit-based assessment of the landscaped area for the proposed development, due consideration has been given to the above objectives and the planning principles set by the Land and

Alterations and Additions to Existing Dwelling House 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, site topography should be considered when assessing the proposed height of buildings for the site. Given the proposed application is relatively minor and consistent with the built form character of the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard.

By providing flexibility the subject proposal is capable of achieving a better development and design outcome which adequately caters for enhanced housing options for the residential needs within the Northern Beaches LGA, in particular the Balgowlah precinct.

The First Method

The proposal is consistent with the objectives of Clause 4.3.

4.3 Height of buildings

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

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following—*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*

Comment: It is acknowledged that the proposed development does not comply with clause 4.3 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the MLEP2013 and demonstrates that compliance with the provisions of clause 4.3 (2) is both unreasonable and unnecessary and the proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.

The development standard in Clause 4.3 (2) of the MLEP2013, is amendable to variation. The purpose of this Clause 4.6 is to vary the Height of Building as a building height referable to the building to give Council the power to grant development consent to the non-compliant purposes. This proposition is reinforced by the following:

Clause 4.3 (2) states:

Alterations and Additions to Existing Dwelling House and Associated Works

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The Height of Building Map sets a maximum Height of Building control of 8.5m. For the purpose of calculating Height of Building, the MLEP2013 provides the following definition:

Building height is defined as follows:

building height (or height of building) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

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

The Height of Building in clause 4.3(2) of the MLEP2013 is a development standard in accordance with the definition set out below:

Development standards' is defined in section 1.4 of the EP&A Act 1979 as:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which **requirements are specified or standards are fixed** in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

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

Despite the variation to the Height of Building control which occurs as a result of the topography of the land, the proposed development is considered to be in keeping with the desired future character of the locality. The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project designer has worked tirelessly to design through alterations and additions a modern high-end development that meet the sites constraints and the existing bulk and scale of the area; therefore, the proposal will not result in any unreasonable visual impact on the Upper Beach Street and Wanganella Street streetscapes.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under MLEP2013 and the provisions of Clause 4.6 which permit a variation to a development standard. It is noted it is consistent with the approval granted through the case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 is that the distorted height plane creates reasonable environmental planning ground that justifies the contravention of the height standard.

In determining the building heights of the development, it is important to understand the definitions of building height and ground level (existing) and also relevant case law from the NSW Land and Environmental Court.

The court now considers the definition of "ground level (existing)" *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, which insists that the ground level (existing) is

Alterations and Additions to Existing Dwelling House and Associated Works

measured from the **excavated** ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an 'environmental planning ground' that may justify the contravention of the height standard under 'clause 4.6' when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. This falls hand in hand with the original leading cases *Bettar v Council of the City of Sydney [2014] NSWLEC 1070* and *Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189*.

It is noted that common-sense should prevail from the new court case "Merman Investments Pty Ltd" with the fact that many height planes are now going to be distorted creating an argument which goes hand in hand with the original court cases relating to the extrapolated levels of a site through 'Bettar'.

As a result of the above, it is determined that the maximum building above ground level (existing) is 8.65m for the proposed development. This results in a 0.15m variation or 1.76%. The Development Application is supported by a Clause 4.6 Variation to Development Standard report. It is noted that the building height existing is 9.87m with the proposed works well under the existing ridge lines. It is noted that the breach is the result of the sloping nature of the site, several existing man-made level changes which distort the existing ground level and the existing man-made changes. If the natural ground level was applied, the proposed variation would be consistent with other approvals granted in the area and would comply with the 8.5m height allowance. Regardless, the natural topography of the site and the existing building (which is already non-compliant) makes compliance with the building height impractical, and therefore unreasonable for Council to enforce. The bulk and scale and appearance of the dwelling is retained to Upper Beach Street. The proposal is supported and in our opinion is consistent with the objectives of the Clause, as outlined below:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality, This objective relates to streetscape character and in this regard the proposed dwelling has been designed to be consistent with the two storey bulk and scale of Wanganella Street and Upper Beach Street. The height, bulk, scale of the development, as reflected by floor space, are entirely consistent with the built form characteristics established by the enclave of surrounding development in this precinct. It is our considered opinion that the proposal is consistent with the intent and approvals granted in the area, therefore confirming that the proposal is consistent with the prevailing building height, roof forms and the future streetscape of the locality.

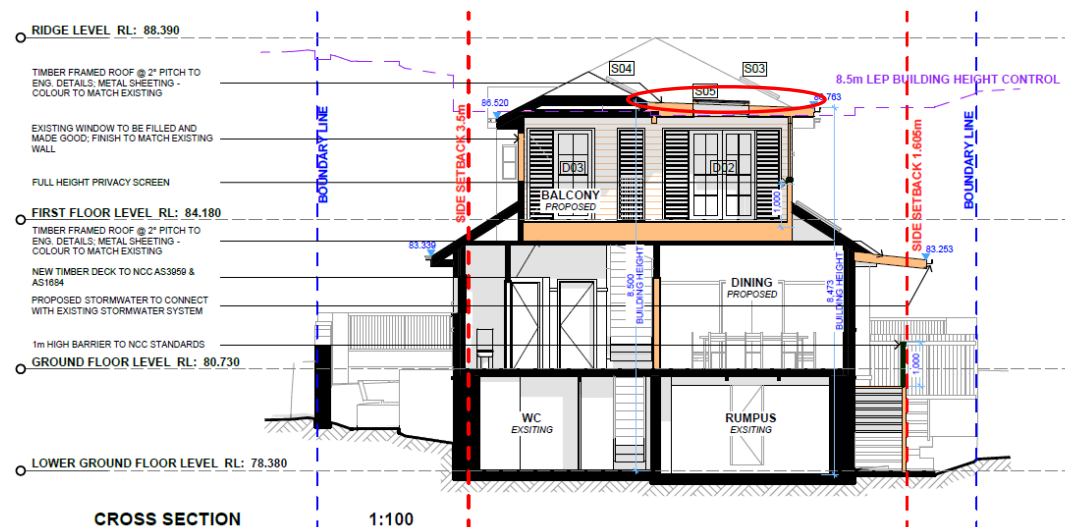
The variation is due to the existing bulk and scale of the dwelling which is already over the building height as a result of the natural topography and existing man-made changes which hinders the development when assessed with the ground level (existing) definition. If the merits of the 'Bettar' Court Case are utilised, the natural ground level enables a variation with that consistent with other developments. The proposal is consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191*, in that I have formed the considered opinion that most observers would not find the proposed development by virtue of its roof form and building height, and in particular the non-compliant building height elements, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment. The proposal is consistent with this objective notwithstanding the variation to the building height.

(b) to control the bulk and scale of buildings, The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project designers have worked tirelessly to design a modern dwelling through

Alterations and Additions to Existing Dwelling House and Associated Works

alterations and additions that meet the sites constraints and the existing bulk and scale of the area. The proposal has been designed to be compatible with the existing streetscape (noting the existing bulk and scale along the northern side of Upper Beach Street and eastern side of Wanganella Street) while accommodating a bulk and scale that is complementary to the natural environment. The first floor has been designed with varying and large side setbacks which reduces the bulk and scale and accommodates a dwelling that blends in with the streetscape.

The minor variation relates to existing structures which are to be altered with a lower pitched roof and skylights, which in turn have a minor variation to the building height, as per below:



As assessed within objective (a) the proposal is consistent with the streetscape of Wanganella Street and Upper Beach Street, which therefore dictates the bulk and scale for the locality.

(c) to minimise disruption to the following—

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

Having inspected the site and its surrounds I am of the opinion that the building form and height of the proposed development, in particular that associated with the building height breaching elements, has been appropriately located within the site to minimise disruption of views to nearby residential development and from surrounding public spaces. The proposal is consistent with this objective notwithstanding the proposed variation to the building height.

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

Having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140 as they relate to an assessment of view impacts, I am satisfied that the proposed building height variation will not give rise to any unacceptable public or private view affectation. Whilst the proposal seeks a variation to the building height standard, view impacts have been minimised and a view sharing outcome achieved. The proposal is consistent with this objective notwithstanding the proposed building height variation.

Alterations and Additions to Existing Dwelling House and Associated Works

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

The building form and height has been appropriately distributed across the site such that the proposed variation to the building height will have no impact on views between public spaces. The proposal is consistent with this objective notwithstanding the proposed variation to the building height.

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

The application is accompanied by shadow diagrams drawings DA15, DA16 and DA17 which depict the impact of shadowing on the neighbouring properties. The shadow diagrams demonstrate that the proposed development, particularly the non-compliant building height elements, will not unreasonably overshadow adjoining neighbours living room windows and private open space areas with compliant levels of solar access maintained between 9am and 3pm on 21st June. The proposal is consistent with this objective notwithstanding the building height breaching elements proposed.

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

Not applicable – the site is not located within a recreation or environmental protection zone.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing and future character of the area. The proposal is not offensive, or unsympathetic in a streetscape context nor the context from Wanganella Street and Upper Beach Street, and therefore the variation can be supported by Northern Beaches Council.

For the reasons outlined within this written request, the proposal will achieve the objectives of Clause 4.3 and accordingly, are of the view that the proposal is consistent with the objectives of the development standard.

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

There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

*“to achieve better outcomes **for and from** development by allowing flexibility in particular circumstances.”*

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the height of buildings development standard for the following reasons:

Alterations and Additions to Existing Dwelling House and Associated Works

1. Historical excavation and site disturbance
2. Topography of the site
3. Existing Building Height
4. Characterisation of the development
5. Streetscape Appearance

- The sites topography and existing man-made excavation distorts the height plane for the site. If the natural ground level was taken, the proposal would comply with the building height control.
- The proposed development responds to the existing and desired future character of the locality. Furthermore, the subject proposed dwelling through alterations and additions retains the building footprint and in majority the height existing on the site. It's our opinion that the proposal will integrate into the existing streetscape and pattern of development within Wanganella Street and Upper Beach Street.
- The development does not result in any unnecessary or undue bulk or visual impacts on adjoining properties and is of a scale that is compatible with the existing and surrounding buildings.
- The amenity impacts to neighbouring residential properties, arising from the non-compliant building height, is negligible. Adjoining properties will continue to receive suitable solar access, privacy impacts are suitably minimised, and views are reasonably maintained.
- The building height breach is compliant (when assessed from the natural ground level) with the variation relating to only a small portion of the proposed development which will largely be indiscernible when viewed from Upper Beach Street.
- The proposal is consistent with the stance Council has taken on developments within the immediate area noting numerous approvals granted for variations to the building height control.
- The building existing has a maximum building height of 9.87m, which the proposed alterations and additions to sit at least a metre below that existing.

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, and further to the proposal's consistency with the above strategic and statutory environmental planning provisions, the proposal is consistent with the following objectives under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

- (c) to promote the orderly and economic use and development of land; and*
(g) to promote good design and amenity of the built environment,

1. In response to (c), the proposal will facilitate the orderly and economic use and development of the land in a manner that is desired by the planning controls because it will facilitate the renovated dwelling consistent with approvals in the immediate area. In considering the contrary (refusal of the DA), retention of the building in its current form would not promote the orderly and economic use and development of land in the manner that council's strategic and statutory planning provisions seek. Retention of the building in its current form makes no advancement towards achieving the goal of creating functional development opportunities.

Alterations and Additions to Existing Dwelling House and Associated Works

2. In response to (g) the proposal has been designed to promote good design and amenity of the built environment, with a consistent built form retained for Wanganella Street and Upper Beach Street as per recent approvals.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height of buildings non-compliance in this instance.

5 Conclusion

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

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

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



**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
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Alterations and Additions to Existing Dwelling House 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:

Warrick and Greta McLean

10 December 2024

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 Dwelling House and Associated Works

1. Introduction

The nature and extent of the contravention is as follows:

Requirement	0.5:1 195sqm
Existing	0.56:1 217.15sqm
Proposed	0.57:1 221.74sqm
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	13.71%

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 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 Balgowlah area.

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

Comment: The works preserve the existing typology of the dwelling house.

- **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 Dwelling House 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 0.5:1, however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

Clause 4.6(5) of MLEP has been repealed and is not applicable.

Alterations and Additions to Existing Dwelling House and Associated Works

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is 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 Dwelling House 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 mixed-use development.

The proposal is consistent with the objectives of Clause 4.4, as outlined below:

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

The proposed works are consistent with height, bulk and scale of adjoining dwellings within the streetscape. The existing façades fronting Wanganella and Upper Beach Street will be preserved with the proposed additions sited behind and below the existing roof ridge line. The site will be enhanced through a new development that has taken into consideration the adjoining properties to the north and east, whilst also understanding the sites constraints. The proposal provides adequate setbacks as required by MDCP. It is our considered opinion that the proposal is consistent with the intent and approvals granted in the area, therefore confirming that the proposal is consistent with the prevailing bulk and scale and the future streetscape of the locality. This is proven with the approvals granted with variations, including the following:

- 22 Violet St Balgowlah – variation 8.1%
- 27 Violet St Balgowlah – variation 4.3%
- 31 West St Balgowlah – variation 13.4%
- 58 Seaview St Balgowlah – variation 6%
- 7 Ethel St Balgowlah – variation 6.67%

**Note the list above is a quick review of recent approvals in the immediate area and does not include sites where applications are not available online. It provides relevant justification that the control is unreasonable and unnecessary within the immediate area of the subject site and sufficient environmental planning grounds apply.*

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the bulk and scale of the proposed development, as viewed from Wanganella and Upper Beach Street, to be offensive, jarring or unsympathetic in a streetscape context. This objective is satisfied, notwithstanding the non-compliant FSR proposed, as the bulk and scale of development is consistent with the existing and desired streetscape character.

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

The development will result in a built form and massing that is of a consistent scale to the existing dwelling and surrounding properties. The development will not obscure any important landscape or townscape features and will not result in any view loss impacts. It is therefore considered this objective is met, despite the numerical variation.

Alterations and Additions to Existing Dwelling House and Associated Works

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

The proposed works are visually appropriate for the locality and propose a built form consistent with the existing dwelling. The landscaped area on the property will remain unchanged, as proposed works are located within the existing building footprint. I am satisfied that the development, notwithstanding its FSR non-compliance, achieves the objective as it maintains an appropriate visual relationship between new development and the existing character and landscape of the area.

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

In responding to this objective, I have adopted views, privacy, solar access and visual amenity as environmental factors which contribute to the use and enjoyment of adjoining public and private land. The proposed alterations and additions will not result in any impacts on the use or enjoyment of neighbouring properties or the public areas adjoining the site. It is my professional opinion that the proposal provides a functional building for the new occupants which ensures the amenity and privacy of adjoining properties is maintained.

Privacy

Given the spatial separation maintained between the balance of surrounding properties, and the primary orientation of living areas for the site, I am satisfied that the design, although non-compliant with the FSR standard, minimises adverse environmental impacts in terms of privacy and therefore achieves this objective.

Solar access

The accompanying shadow diagrams demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impacts with compliant levels of solar access maintained to adjoining properties.

Visual amenity/ building bulk and scale

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

It is my considered opinion that the building, notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.

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

Not applicable – the site is located within a residential zone.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing and future character of the area. The proposal is not offensive, or unsympathetic in a streetscape context, and therefore the variation can be supported by Northern Beaches Council.

Having regard to the above, the proposed building form which is non-compliant with the FSR standard will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the FSR standard. This is consistent with the approvals

Alterations and Additions to Existing Dwelling House and Associated Works

granted with variation and reference under objective (a). Given the developments consistency with the objectives of the FSR standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

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

There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

*“to achieve better outcomes **for and from** development by allowing flexibility in particular circumstances.”*

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

Context and Established Precedence

- The 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 to the existing dwelling house with the main additions sited behind and below the existing roof ridge line where they are not offensive in the streetscape context.
- The existing dwelling is already non-compliant with the proposal shifting the floor space away from the streetscape of Upper Beach Street whilst not impacting the neighbour to the north (noting a 4.26m setback).
- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:
 - 22 Violet St Balgowlah – variation 8.1%
 - 27 Violet St Balgowlah – variation 4.3%
 - 31 West St Balgowlah – variation 13.4%
 - 58 Seaview St Balgowlah – variation 6%
 - 7 Ethel St Balgowlah – variation 6.67%
- 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 Dwelling House and Associated Works

- The minor increase to the existing floor area of 4.59sqm is considered reasonable as it is located within the existing building footprint and does not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the existing dwelling and the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,
- The natural environment is unaffected by the departure to the development standard as the works relates to alterations and additions within the existing building footprint, therefore it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in the dedicated home offices. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report

Having regard to Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, and further to the proposal's consistency with the above strategic and statutory environmental planning provisions, the proposal is consistent with the following objectives under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

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

Alterations and Additions to Existing Dwelling House and Associated Works

- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The above environmental planning grounds are not general propositions, they are unique circumstances to the proposed development. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed floor space ratio non-compliance in this instance.

Summary

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and exception to the development standard is reasonable and appropriate in the circumstances of the case.

**ITEM 3.7 DA2024/1261 - POR 1073/ SPICER ROAD OXFORD FALLS -
CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING
POOL, CABANA, TENNIS COURT, OUTBUILDING AND ASSOCIATED
LANDSCAPING AND DRIVEWAY WORKS**

PURPOSE

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

RECOMMENDATION

- A. That Council as the consent authority, vary the Built Form Controls under the B2 Locality of Warringah LEP 2000 pursuant to clause 20 of WLEP 2000 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 DA2024/1261 for Construction of a dwelling house, including swimming pool, cabana, tennis court, outbuilding and associated landscaping and driveway works on land at Lot 1073 DP 752038, POR 1073/ Spicer Road, Oxford Falls, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2025/157553
Attachments	↓1 Assessment Report ↓2 Site Plan & Elevations



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1261
Responsible Officer:	Dean Pattalis - Planner
Land to be developed (Address):	Lot 1073 DP 752038, 1073 / 0 Spicer Road OXFORD FALLS
Proposed Development:	Construction of a dwelling house, including swimming pool, cabana, tennis court, outbuilding and associated landscaping and driveway works
Locality:	B2 Oxford Falls Valley
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Buildcraft Group Pty Ltd
Application Lodged:	23/09/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential – Single new detached dwelling
Notified:	02/10/2024 to 16/10/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 20 Variation:	Yes
Recommendation:	Approval
Estimated Cost of Works:	\$2,188,595.42

EXECUTIVE SUMMARY

This development application seeks consent for the construction of a dwelling house, including swimming pool, cabana, tennis court, outbuilding and associated landscaping and driveway works.

The application is referred to the Development Determination Panel (DDP) as it contravenes a number of built form controls which are “development standards” under the B2 Locality of Warringah LEP 2000, by greater than 10%. In this instance, the relevant built form controls include the front building setback and side building setback.

One submission was received during the assessment period which raised concern regarding unauthorised demolition and clearing works which have occurred on the subject site. This matter is discussed within the ‘Site History’ section of this report.

Critical assessment issues include; proposed variations to the front and side building setback



controls of WLEP 2000 (B2 Oxford Falls Valley Locality), which have been assessed under Clause 20 of the WLEP 2000, and on the basis that the proposal is found to be consistent with the desired future character statement and the general principles of development control, the variations are considered to be acceptable and are supported.

All internal and external referrals are in support of the proposed development, subject to recommended conditions of consent.

An amended Flora & Fauna Assessment, Biodiversity Management Plan and Landscape Plan have been submitted in response to referral requirements from Council's Biodiversity Officer, whilst a Preliminary Site Investigation and Detailed Site Investigation were also provided in response to referral requirements from Council's Environmental Health Officer (Contaminated Lands).

The application is recommended for approval subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for the construction of a new single storey dwelling, including a new swimming pool, driveway and landscaping works.

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

Appendix B Narrabeen Lagoon Catchment Locality Statements - LOCALITY B2 OXFORD FALLS VALLEY – Built Form Controls:

- Front Building Setback
- Side Building Setback

SITE DESCRIPTION



The subject site is located on the western side of Spicer Road, approximately 140 metres south of its intersection with Dreadnought Road in Oxford Falls. The site is legally described as Lot 1073 in DP752038.

The site is an irregular shaped lot with boundaries of 126.22m (east – Spicer Road frontage) 93.015m (west – rear boundary) and side boundaries of 200.41m (north) and 128.42m (south).

The site has an area of 1.435 hectares.

Surrounding land uses are residential to the north and south, bushland to the west and Oxford Falls Grammar School to the east. The site is located in close proximity to shops and services in Frenchs Forest to the south-west and Beacon Hill to the south-east.

Subject Site:



SITE HISTORY

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

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

BLD2016/00268 dated 21/06/2016

Building investigation undertaken in relation to complaints of unauthorised dumping of materials on the road reserve and public land. The investigation concluded that no further action would be taken as the breach was considered to be a result of natural storm damage.

Pol2022/00510 dated 24/05/2022

Investigation under taken by Environmental Health in response to complaints of clearing works and failure to undertake appropriate sediment control. The investigation concurred that there was evidence of large amounts of materials leaving the site and a Prevention Notice was



issued.

BLD2022/02190 dated 31/10/2022

Building investigation undertaken in response to a complaint received by Council in relation to unauthorised site clearing and waste run-off. The investigation considered the works to be exempt development and no further action was taken.

BLD2024/00139 dated 26/08/2024

Building investigation undertaken in response to a complaint received by Council in relation to unauthorised demolition of the existing house as well as clearing, levelling, cut and fill works. A penalty notice was issued for the demolition of the existing dilapidated building, whilst a warning penalty notice was issued for the earthworks as the levelling of the area had been generally rectified. The investigation could not conclude any wrongdoing in relation to clearing of vegetation due to the amount of time lapsed since the removal and the owner asserting that the trees were already in a dilapidated state. The investigation concluded that no further action was required.

Current Application History

An amended Flora & Fauna Assessment, Biodiversity Management Plan and Landscape Plan have been submitted in response to referral requirements from Council's Biodiversity Officer.

A Preliminary Site Investigation and Detailed Site Investigation were also provided in response to referral requirements from Council's Environmental Health Officer (Contaminated Lands).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

Section 4.15 Assessment

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

Section 4.15 'Matters for Consideration'	Comments
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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 2000 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	Not 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.



Section 4.15 'Matters for Consideration'	Comments
	Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Refer to Site History. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposal on the natural and built environment are addressed under the General Principles of Development Control in this report. In summary, the proposal is satisfactory with conditions, having regard to environmental impacts. (ii) The proposal will not have a detrimental social impact on the locality considering the residential character of the proposal. (iii) The proposal will not have a detrimental economic impact on the locality considering the mixed semi-rural uses within the surrounding locality and the existing and ongoing use of the site for residential purposes.



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code & Bushfire Hazard Solutions Pty Limited, dated 1 July 2024) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 2/10/2024 to 16/10/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and Council's Community Participation Plan.

As a result of the public exhibition process council is in receipt of one (1) submission from:

Name:	Address:
Anonymous	N/A

The following concerns were raised in the submission:

- **Unauthorised works**

Comment:

Concern was raised in regard to the unauthorised demolition and clearing works which have occurred on the subject site. These works have been investigated by Council's compliance team and have been summarised in the 'Site History' section of this report. Council has issued the owner of the subject site with a penalty notice for the demolition of the prior on-site building, whilst a penalty warning notice was only issued for the earthworks given that the investigation



considered the levelling works had been generally rectified. In relation to the clearing of vegetation, the owner attested that the removed trees were generally exempt or already in a damaged state to which Council's investigation required no further action.

Council's Landscape and Biodiversity Officers have reviewed the proposal, but can only assess the site in the context of its existing state, as any prior illegal works which occurred on site are referred to Council's Building Control team who have now concluded their investigation and course of action. Notwithstanding, recommended conditions of consent require tree planting for 8 locally native canopy trees to be planted within the property to achieve at least 10m height at maturity, to replace the tree removal proposed within the application at a 2:1 replacement ratio.

Furthermore, given the history of site disturbance, a Preliminary Site Investigation (PSI) and Detailed Site Investigation (DSI) prepared by NEO Consulting, were submitted during the assessment process to assess the risk of contamination. The reports concluded that the risk of contamination is low and the site to be suitable for the proposed development. Council's Environmental Health Officer has reviewed the proposal in this context and raised no objection to approval, subject to recommended conditions.

- **Run-off to adjoining sites**

Comment

Concern was raised in regard to soil run-off being expelled to adjoining properties and creeks. Suitable conditions of consent are recommended for sediment and erosion control practices to be implemented, whilst Council's Riparian Lands and Creeks Officer has also reviewed the application and raised no objection to approval, subject to recommended conditions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulfate)	SUPPORTED WITH CONDITIONS General Comments <i>Environmental Health has been requested to consider this proposal in regard to the presence of actual or potential acid sulphate soils.</i> <i>An Acid Sulphate Assessment supplied with the proposal documentation has outlined borehole testing and chemical analysis undertaken.</i> <i>The report provides the following conclusion:</i> <i>"...Laboratory sample analysis indicates that test levels did not exceed the action criteria in SPOCAS testing and it has been determined that an acid sulphate management plan will not be required for excavation activities on the site....."</i> <i>The plans supplied with the proposal indicate excavation is required for the construction of a swimming pool.</i> <i>Additionally, foundational works (piers, footings etc) will</i>

Page 8 of 21

DA2023/1439



	be required for the construction of the dwelling. A such, the proposal is supported with the recommendation of a condition of consent requiring notification should further evidence of acid sulphate soils (that alters previous conclusions) should they be encountered during works. Recommendation APPROVAL - subject to conditions
Environmental Health (Contaminated Lands)	SUPPORTED WITH CONDITIONS General Comments The proposal for a residential dwelling to be constructed upon potentially contaminated lands has been given consideration. Given that there appears to be a history of complaints regarding activities at the property, combined with historical aerial photographs of the property which show land clearing, storing of materials and extensive soil disturbance, Environmental Health has concerns as to the nature of previous ancillary uses at the property and how they may potentially affect the suitability of the land to the proposed residential development. Accordingly, in the absence of a Preliminary Site Investigation (PSI) by an appropriately qualified person into the suitability of the land for the development, Environmental Health does not support the proposal at this time. <u>Update - 06/02/2025</u> The applicant has provided further information in the form of a Preliminary Site Investigation prepared by a specialist consultant. The report states that concludes (in part) it is considered "...the potential for significant contamination of soil to be moderate...", however the site can be made suitable for the proposed land use upon compliance with a number of recommendations, which include "...Preparation of a Detailed Site Investigation (DSI)..." which has not been included with the proposal documentation. Accordingly, Environmental Health does not support the proposal as consent cannot be granted in accordance with clause 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021 until such time as a DSI is submitted and further information considered. <u>Update - 03/03/2025</u> The applicant has provided further information in the



	<i>form of a Detailed Site Investigation (DSI) prepared by a specialist consultant.</i> <i>As part of the DSI, an additional 18 boreholes were investigated with relevant sampling and testing undertaken. Not excluding a couple of minor exceedances noted by the consultant, it has been concluded that "...the potential for significant soil contamination to be low and concludes that the site is suitable for the proposed Residential (A) land use,..."</i> <i>The consultant has provided two recommendations which shall be included as recommended conditions of consent.</i> Recommendation APPROVAL - Subject to Conditions
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Internal Referral Body	Comments
Environmental Health (Unsewered Lands)	SUPPORTED WITH CONDITIONS General Comments <i>Environmental Health has been requested to provide comment on this proposal for "Construction of a dwelling house including swimming pool, cabana, tennis court, outbuilding and associated landscaping and driveway works" in respect of it being proposed on unsewered lands.</i> <i>The proposal is accompanied by a waste water consultants report which describes the proposed waste water system being an aerated waste water treatment system with the effluent disposal area being subsurface irrigation.</i> <i>Council's records indicate at some point a dwelling house previously existed on site and as such, a septic tank waste water system is said to have been in place, though its current status is unknown.</i> <i>Given the conclusions reached in the waste water report, the proposed system and the size/location of the effluent disposal area appear to be appropriate.</i> <i>The proposal is supported with appropriate conditions of consent recommended.</i> Recommendation APPROVAL - subject to conditions
Landscape Officer	SUPPORTED WITH CONDITIONS <i>The application seeks consent for: Construction of a dwelling house including swimming pool, cabana, tennis court, outbuilding and associated landscaping and driveway works.</i> <i>The Arborist's Report prepared by Advanced Treescape Consulting is noted.</i> <i>The Report indicates that eight trees on the site within the area of proposed works are to be removed and two trees are to be retained. The rear natural bush area is noted to be retained.</i> <i>The trees identified for removal contain six trees that fail the Visual Tree Assessment with the other two located in the alignment of the driveway.</i> <i>All trees proposed for removal are rated Low-Medium significance.</i>



	<i>The plans indicate that the site around the dwelling is to be managed as an Inner Protection Zone, which places restrictions on canopy cover and landscape species and materials.</i> <i>I would defer to Council's Bushland and Biodiversity section for Biodiversity issues that may be associated with the tree removals, however, based on the Arboricultural assessment and bushfire requirements, no objections are raised to removal from a landscape perspective, subject to replacement planting, as indicated on the Landscape Plan.</i> <i>The area of works is within previously disturbed areas, with the remnant bushland at the rear of the site retained and separated by a sandstone block wall.</i> <i>No objections are raised regarding landscape issues subject to conditions.</i>
NECC (Bushland and Biodiversity)	SUPPORTED WITH CONDITIONS Original Comments Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable provisions: • Warringah DCP cl. E2 Prescribed Vegetation • Warringah DCP cl. E6 Retaining Unique Environmental Features • Planning for Bushfire Protection 2019 <i>An Arborist Report (Advanced Treescape Consulting, August 2024) was submitted with the application which recommends the removal of 4 native prescribed trees including Tree 3 (Eucalyptus robusta), Tree 5 (Eucalyptus pilularis), Tree 6 (Eucalyptus pilularis) and Tree 7 (Corymbia gummifera), and 3 x dead Eucalypt sp. (stags). No objections to the removal of these trees based on advice provided by the Arborist and Ecologist, subject to their replacement at a 2:1 ratio.</i> <i>A Flora & Fauna Assessment & Biodiversity Management Plan (Environmental Services and Education Australia, August 2024) was submitted with the application to assess any biodiversity constraints, determine the likely impacts of the proposed works, suggest appropriate avoidance and mitigation measures. The Ecologist undertook ground truthing of Plant Community Types (PCT) within the site and assessed impacts to threatened species fauna habitat as a result of the proposed development. It is unclear where the Biodiversity Management Plan is located within the</i>



	document, and as such Council request that a map based BMP be included in the document. The BMP is to include the remnant vegetation within the western extent of the lot which is to be maintained in perpetuity under a section 88b covenant by way of condition should the application be supported. The map based BMP is to provide advice on relevant management activities such as (not limited to) installation of permanent bollards to delineate the vegetation at the rear of the site and the development area, temporary fencing, signage, nest box installation, weed removal etc. It is not expected that any planting within the remnant vegetation would be required, however is at the discretion of the Ecologist. The Landscape Plan (Greenscape Landscapes, September 2024) as submitted, does not contain suitable species for replacement of canopy trees proposed for removal. As such, the Landscape Plan is to be amended to include native replacement canopy trees at a replacement ratio of 2:1 with canopy species the same or similar to those proposed for removal. Upon receiving the amended FFA/BMP report and Landscape Plan, Council's Biodiversity Referrals team will recommence assessment of the application. Additional Comments Amended documentation was submitted by the applicant in response to the above request for information, including the following: • Flora & Fauna Assessment & Biodiversity Management Plan (Environmental Services and Education Australia, November 2024) • Landscape Plan (Greenscape Landscapes, November 2024) Amended documentation reflects the requested amendments, and as such, there are no objections in relation to biodiversity, subject to conditions.
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NECC (Development Engineering)	SUPPORTED WITH CONDITIONS <i>The proposal is for the construction of a new dwelling. The stormwater plan proposes discharge to a level spreader within the site which is acceptable subject to conditions.</i> <i>The proposed driveway is off a section of unformed road at the edge of Spicer Road. Comments from Council's Road Asset team are needed regarding any required road works prior to further assessment..</i> <i>Note to Planner: Please refer to Road Asset team for comments.</i> <i>Review 20/11/2024</i> <i>No objections to approval subject to conditions as recommended.</i>
NECC (Flooding)	SUPPORTED WITH CONDITIONS <i>The proposed development is for the construction of a new single storey dwelling house, with swimming pool, pool cabana, shed and associated landscaping. This proposal has been assessed against Section E11 of the Warringah DCP and Clause 5.21 of the Warringah LEP.</i> <i>The site of the proposed dwelling is largely unaffected by any flood risk precincts. The proposed driveway is within an area affected by the Medium flood risk precinct and is subject to conditions.</i> <i>Subject to the following conditions, the proposal generally complies with Section E11 of the Warringah DCP and Clause 5.21 of the Warringah LEP.</i>
NECC (Riparian Lands and Creeks)	SUPPORTED <i>This application was assessed in consideration of:</i> - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. <i>This proposal is supported. Details below.</i> Riparian <i>The site is located Trefoil Creek and as such proposed development must not significantly impact on the biophysical, hydrological or ecological integrity of Trefoil Creek or the quantity and quality of surface and ground water flows that it receives.</i>



	Sediment Management <i>Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</i>
<i>Parks, reserves, beaches, foreshore</i>	SUPPORTED <i>The development site adjoins Corymbia Circuit Reserve that is located upslope, and the land is zoned Re1 Public Recreation.</i> <i>The Bush Fire Report is noted and the Asset Protection Zone (APZ) shall be within the subject property, as proposed, and as defined by boundaries and shall not encroach into adjoining properties including public reserve land.</i> <i>No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. The development is not detrimental to the prevailing landscape character when viewed from the adjoining reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.</i>
<i>Road Reserve</i>	SUPPORTED <i>The proposed works have limited impact to the road reserve.</i> <i>There is no objection to the proposed works.</i> <i>Development engineering team to ensure standard bonds and Northern Beaches vehicle crossings requirements apply as part of the development.</i>



External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	SUPPORTED WITH CONDITIONS The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Rural Fire Service - Local Branch - EP&A Act, s4.14	SUPPORTED WITH CONDITIONS <i>The application was referred to the NSW RFS. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS as part of the bush fire safety authority, have been included as part of the recommended conditions of consent.</i>
Aboriginal Heritage Office	SUPPORTED WITH CONDITIONS <i>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.</i> <i>If areas of in situ sandstone outcrop are in the proposed development area or revealed during works (i.e. platforms over 2m square), the Aboriginal Heritage Office would recommend a preliminary inspection by a qualified Aboriginal heritage professional prior to any further development.</i> <i>If there are no existing sandstone outcrops present (or if any outcrops that were present were properly excluded from future impacts), then no further assessment is required and the Aboriginal Heritage Office would not foresee any further Aboriginal heritage constraints on the proposal.</i>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are



enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

State Environmental Planning Policies (SEPPs)

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No.1753272S dated 27 June 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 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/rural purposes for a significant period of time with substantial land clearing and disturbance works taking place as mentioned in the site history section of this report. As a result, Council's Environmental Health Officer requested a Preliminary Site Investigation (PSI) and Detailed Site Investigation (DSI) be provided with the application. The recommendations of the DSI and Council's Environmental Health Officer are included as conditions of consent. Therefore, in consideration of sub-section 4.6 (1)(b) and (c) of this Chapter, the land is considered to be suitable for the residential land use.



Warringah Local Environmental Plan 2011 (WLEP 2011)

The B2 Oxford Falls Valley Locality, which covers the land subject to this application, was proposed to be zoned E3 Environmental Management in the draft 2009 version of Warringah's standard instrument LEP. This was based on a detailed translation methodology that was applied to all land within the former Warringah LGA.

In December 2011, the Minister for Planning and Infrastructure deferred land in the Oxford Falls Valley and Belrose North areas from the Warringah Local Environmental Plan 2011 (WLEP 2011) in response to stakeholder concern regarding the adequacy of consultation during the preparation of WLEP 2011.

Accordingly, WLEP 2011 and the current Warringah Development Control Plan 2011 do not apply to this application. In addition to this, the draft of the made LEP is not a matter for consideration, due to the way that the locality was excluded from the making of the LEP.

Warringah Local Environment Plan 2000 (WLEP 2000)

The property is subject to Clause 1.3(1A) of the Warringah Local Environmental Plan 2011 and is classified as 'Deferred Land'.

The development is therefore assessed against the provisions of the Warringah Local Environment Plan 2000, including the B2 Oxford Falls Valley locality, and other relevant clauses, in particular Clause 12, Clause 20 and the General Principles of Development Control.

B2 Oxford Falls Valley

The Desired Future Character Statement for Locality B2 states:

"The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.

Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained."



Definition and Category of Development

The proposed development is defined as "Housing" under the WLEP 2000 dictionary.

"Housing" is identified as Category 2 development in this locality.

Clause 12(3)(b) of WLEP 2000 requires the consent authority must be satisfied that the proposed development is consistent with the Locality's DFC statement.

Assessment of the development against the Desired Future Character statement (DFC)

As such, the following provides an assessment of the development against the various parts of the above DFC statement:

- ***Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.***

Comment

The proposed development is a detached single-storey dwelling house on an existing vacant allotment and has a scale and density that will not disrupt the skyline.

The proposal is consistent with this part of the DFC.

- ***The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.***

Comment

The proposal is considered to reasonably integrate with the natural landscape of the existing site, with site disturbance and vegetation removal adequately minimised. Council's Landscape and Biodiversity Officers have reviewed the application and raised no objection to approval and provided recommended conditions of consent.

The proposal is consistent with this part of the DFC.

- ***A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.***

Comment

The site does not adjoin and is not visible from Forest Way or Wakehurst Parkway, hence this part of the DFC is not applicable.

- ***Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.***

Comment

DA2023/1439

Page 19 of 21



The subject site is located in proximity to Trefoil Creek which links to Middle Creek and Narrabeen Lagoon. Council's Riparian Lands and Creeks Officer has reviewed the application and raised no objection to approval and provided recommended conditions of consent.

The proposal is consistent with this part of the DFC.

Conclusion on the DFC

Based upon the above assessment, the development is consistent with the DFC statement for the B2 Oxford Falls Valley locality.

Built Form Controls for Locality B2 Oxford Falls Valley

The following table outlines compliance with the Built Form Controls of the above locality statement:

Built Form Standard	Required	Proposed	Compliance
Housing Density	1 dwelling per 20ha	1 dwelling on site	Yes
Building Height	8.5m (overall) 7.2m (ceiling)	7.48m 4.8m	Yes Yes
Front Building Setback	20.0m	20.91m (primary) 10m (secondary)	Yes No
Rear and Side Building Setback	10.0m	North: 4.8m West: 65m	No Yes



Built Form Standard	Required	Proposed	Compliance
Landscaped Open Space (LOS)	30.0%	55%	Yes

The proposed development does not comply with the Locality's Front Building Setback and Side Boundary Setback Built Form Controls.

Accordingly, further assessment is considered against the applicability of Clause 20(1).

Clause 20 - Front Building Setback

Merit consideration of non-compliance

The control stipulates a minimum front building setback to all roads of 20m whilst also stating that the minimum front building setback area is to be densely landscaped using locally occurring species of canopy trees and shrubs and be free of any structures, carparking or site facilities other than driveways, letterboxes and fences. The proposed secondary front setback to Wearden Road is 10m to the proposed shed and 11.33m to the proposed garage, which does not comply with the requirement. It is noted that Wearden Road is currently unformed and occupied by dense bushland.

Clause 20(1) stipulates:

Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, providing:

the resulting development is consistent with the general principles of development control,

Comment

The proposal is consistent with the general principles of development control. It is noted that the primary and secondary frontages of the site currently adjoin unformed roads, whilst it is considered that the proposed reduced setback to the secondary frontage is acceptable given it will relate to single-storey structures that are well integrated into the landform and landscape character of the site.

the desired future character of the locality

Comment

As discussed elsewhere in this report, the proposed development is consistent with the DFC.

and any relevant State environmental planning policy.

Comment

As discussed elsewhere in this report, the proposal development is consistent with all relevant SEPP's.

Clause 20 – Side Building Setback

Merit consideration of non-compliance

The control stipulates a minimum side building setback of 10m whilst also stating that side setback areas are to be landscaped and free of any structures, carparking or site facilities other



than driveways and fences. The proposed tennis court is setback 4.8m to 9.2m from the northern side boundary, which does not comply with the requirement.

Clause 20(1) stipulates:

Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, providing:

the resulting development is consistent with the general principles of development control,

Comment

Despite the non-compliance, it is considered that the majority of the tennis court is compliant with the control, as well as having a minimum spatial separation of 18m to the adjoining dwelling to the north. Furthermore, a recommended condition of consent requires screen planting to be erected along the northern boundary between the tennis court and the adjoining site. The proposed tennis court and chain-link fencing are relatively low-lying with no artificial illumination proposed. Therefore, the proposed non-compliance is not considered to result in any unreasonable impact upon the development's ability to comply with the general principles of development control.

the desired future character of the locality

Comment

As discussed elsewhere in this report, the proposed development is consistent with the DFC.

and any relevant State environmental planning policy.

Comment

As discussed elsewhere in this report, the proposal development is consistent with all relevant SEPP's.

General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed application:

General Principles	Applies	Comments	Complies
CL38 Glare and reflections	Yes	A standard condition of consent is recommended to ensure that roof finishes incorporate a medium to dark range in order to minimise solar reflections to neighbouring properties.	Yes
CL42 Construction Sites	Yes	Conditions are included to mitigate impacts of construction sites	Yes
CL43 Noise	Yes	No adverse noise impacts shall occur.	Yes
CL44 Pollutants	Yes	No adverse pollutant impacts shall occur. Conditions are included to ensure acceptable measures are undertaken to ensure the protection of adjoining properties and the natural environment.	Yes



CL47 Flood Affected Land	Yes	Council's Floodplain Engineer has reviewed the application and raised no objection to approval, subject to recommended conditions.	Yes
CL48 Potentially Contaminated Land CL49 Remediation of Contaminated Land	Yes	A Preliminary Site Investigation (PSI) and Detailed Site Investigation (DSI) have been submitted with the application. Council's Environmental Health Officer has reviewed the application and raised no objection to approval, subject to recommended conditions.	Yes
CL50 Safety and Security	Yes	Development will maintain the safety and security of the locality	Yes
CL52 Development near parks, bushland reserves and other public open spaces	Yes	Subject site is adjacent to a bushland reserve. The proposal provides substantial setbacks and maintains existing landscaping within close proximity to the reserve.	Yes
CL54 Provision and Location of Utility Services	Yes	The proposal has been reviewed by Council's Environmental Health (Unsewered Lands), Development Engineer and Riparian Lands Officer who have raised no objections, subject to conditions.	Yes
CL56 Retaining Unique Environmental Features on Site	Yes	The proposal has been reviewed by Council's Bushland & Biodiversity, Landscaping and Riparian Lands Teams who have raised no objections, subject to conditions.	Yes
CL57 Development on Sloping Land	Yes	The clause requires the amount the amount of proposed fill to not exceed more than 1 metre in depth nor spread beyond the footprint of the building, as well as excavation works to be minimised. The clause also requires development located on the Landslip Hazard Map to be accompanied by a Geotechnical Report. The development proposes generally minimal cut and fill works and is not located within the Landslip Hazard Map. The proposal is therefore considered to be acceptable with no requirement for a Geotechnical Report. Notwithstanding, an Acid Sulfate Assessment prepared by Ideal Geotech has been supplied with the application and the recommendations are included as conditions of consent.	Yes
CL58 Protection of Existing Flora	Yes	The proposed development is in an area of acceptable distance from native/significant trees. Council's Landscaping and Biodiversity Officers have reviewed the proposal and are supportive, subject to conditions.	Yes



CL60 Watercourses and Aquatic Habitats	Yes	As mentioned above, Council's Environmental Health (Unsewered Lands) and Riparian Lands Officers have reviewed the proposal and provided relevant conditions.	Yes
CL61 Views	Yes	No objections were received from properties in relation to view loss. The proposal is single storey and is unlikely to disrupt any significant views in the area.	Yes
CL62 Access to sunlight	Yes	The works will not result in any unacceptable overshadowing.	Yes
CL63 Landscaped Open Space	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
CL63A Rear Building Setback	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
CL64 Private open space	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
CL65 Privacy	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
CL66 Building bulk	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
CL67 Roofs	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
CL68 Conservation of energy and water	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
CL70 Site facilities	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
CL71 Parking facilities (visual impact)	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
CL72 Traffic access and safety	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
CL74 Provision of Carparking	Yes	The site provides ample opportunity for parking.	Yes
CL76 Management of Stormwater	Yes	The proposal is considered to achieve the requirements of this clause. The proposal has been reviewed by Council's Development Engineer who has raised no objections, subject to conditions.	Yes
CL77 Landfill	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
CL78 Erosion and Sedimentation	Yes	The proposal is considered to achieve the requirements of this clause.	Yes



		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. This will be ensured via a condition.	
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Schedules

Schedule	Applies	Complies
Schedule 5 State policies	Yes	Yes
Schedule 6 Preservation of bushland	Yes	Yes
Schedule 7 Matters for consideration in a subdivision of land	No	N/A
Schedule 8 Site analysis	Yes	Yes
Schedule 9 Notification requirements for remediation work	No	N/A
Schedule 10 Traffic generating development	No	N/A
Schedule 11 Koala feed tree species and plans of management	No	N/A
Schedule 12 Requirements for complying development	No	N/A
Schedule 13 Development guidelines for Collaroy/Narrabeen Beach	No	N/A
Schedule 14 Guiding principles for development near Middle Harbour	No	N/A
Schedule 15 Statement of environmental effects	No	N/A
Schedule 17 Carparking provision	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of \$21,886 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,188,595.

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 2000; 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 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 construction of a dwelling house and ancillary works, has been referred to the Development Determination Panel (DDP) as it contravenes a number of built form controls that are development standards under the Warringah LEP 2000, by greater than 10%. In this instance, the built form controls are the front building setback and side building setback.

Critical assessment issues include; variations to the front and side building setback controls of the WLEP 2000 (B2 Oxford Falls Valley Locality). The proposed variations to these development standards have been assessed under to Clause 20 (1) of the WLEP 2000, and on the basis that the overall proposal is assessed as being consistent with the desired future character statement and the general principles of development control, the variations are acceptable and supported on merit.

One (1) submission was received during the assessment period which raised concern regarding unauthorised demolition and clearing works which have occurred on the subject site. This matter is discussed and resolved within the 'Site History' section of this report detailing the history of building control action on the subject site.

Council's internal and external referrals have reviewed the application and are in support of the proposal, subject to recommended conditions of consent.

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, subject to conditions.

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 DA2024/1261 for Construction of a dwelling house including swimming pool, cabana, tennis court, outbuilding and associated landscaping and driveway works on land at Lot 1073 DP 752038, 1073 / 0 Spicer Road, OXFORD FALLS, subject to the recommended conditions of consent included as **Attachment 1** to this report.

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 in **Attachment 1**.



CONDITIONS OF APPROVAL

Application Number:	DA2024/1261
Land to be developed (Address):	Lot 1073 DP 752038, 1073 / 0 Spicer Road OXFORD FALLS NSW 2100
Proposed Development:	Construction of a dwelling house including swimming pool, cabana, tennis court, outbuilding and associated landscaping and driveway works

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
2	G	Site Plan	Buildcraft	09/09/2024
2A	G	Site Plan	Buildcraft	09/09/2024
3	G	Ground Floor	Buildcraft	09/09/2024
4	G	Ground Floor - South	Buildcraft	09/09/2024
5	G	Ground Floor - North	Buildcraft	09/09/2024
7	G	Elevations	Buildcraft	10/03/2025
8	G	Elevations	Buildcraft	09/09/2024
9	G	Sections	Buildcraft	09/09/2024
13	G	Tennis Court Plan	Buildcraft	10/03/2025
14	G	Shed Plan	Buildcraft	10/03/2025
15	G	Pool Section	Buildcraft	09/09/2024
-	-	External Finishes	-	-

Approved Reports and Documentation	
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Document Title	Version Number	Prepared By	Date of Document
Arboricultural Impact Assessment	1	Advanced Treescape Consulting	01/08/2024
Flood Risk Management Plan	A	Zait Engineering Solutions Pty Ltd	31/07/2024
Acid Sulfate Assessment	-	Ideal Geotech	June 2024
Onsite Wastewater Report	-	GSL Environmental	16/09/2024
Bushfire Assessment Report	2	Building Code & Bushfire Hazard Solutions Pty Limited	01/07/2024
Flora & Fauna Assessment and Biodiversity Management Plan	2	ESEA	18/11/2024
Preliminary Site Investigation	0	NEO Consulting	04/02/2025
Detailed Site Investigation	0	NEO Consulting	27/02/2025
Landscape Plan	D	Greenscape Landscapes	05/11/2024
Stormwater Management	B	ALW Design	20/06/2024

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	27 September 2024
NSW RFS	NSW RFS Referral Response	17 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. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).



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

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

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

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

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

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



Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



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

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

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

 - (i) Swimming Pools Act 1992



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

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

5. No Approval for Secondary Dwelling

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

6. No approval for boundary fencing

No boundary fencing is represented on the approved stamped plans (prepared by Buildcraft) and therefore no approval is granted under this consent for any boundary fencing or walls at any boundary of the subject site.

Any dividing fencing at a common boundary is also a matter for civil negotiation between relevant property owners only.

Reason: To ensure consistency with the relevant legislation under the Dividing Fences Act 1991.

FEES / CHARGES / CONTRIBUTIONS

7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$21,885.95 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).



The monetary contribution is based on a development cost of \$2,188,595.42.

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

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

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

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

8. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. **Flood effects caused by development**

There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 74.68m AHD.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

10. **No Clearing of Vegetation**

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



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

Reason: To protect native vegetation.

11. Fencing for Wildlife Passage – Ecologist Certification

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

The Project Ecologist is to provide written certification of compliance to the Certifier prior to issue of any Construction Certificate.

Reason: To preserve wildlife corridors.

12. On-Site Stormwater Disposal Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater disposal in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by ALW Design, drawing number SW24248 - S1, dated 20/6/2024. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. Stormwater disposal shall be via a suitably designed level spreader located within the site.

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

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

13. Vehicle Crossings Application

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 6 metres wide in accordance with Northern Beaches Council Standard Rural Vehicle Crossing 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. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified



person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: To protect the receiving environment.

15. **Engagement of Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with Flora & Fauna Assessment + Biodiversity Management Plan ((Environmental Services and Education Australia).

The Project Ecologist must have one of the following memberships / accreditation:

- Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>) OR
- Biodiversity Assessment Method Accredited Assessor under the relevant legislation (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

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

Reason: To protect native vegetation and wildlife.

16. **Native Vegetation Protection Covenant**

Areas of retained native vegetation within the Biodiversity Management Zone (in accordance with Figure 6-3 Biodiversity Management Zone within the Flora and Fauna Assessment Report and Biodiversity Management Plan, Environmental Services and Education November 2024) are to be protected, conserved, rehabilitated and managed through application of a Section 88B Instrument (Conveyancing Act 1919) in which Northern Beaches Council shall be named as the sole authority to release or modify the restriction. Owners are to be bound to manage the area in perpetuity according to the approved Flora and Fauna Assessment Report and Biodiversity Management Plan (Environmental Services and Education, November 2024) prepared for the approved development. No development within the meaning of the Environmental Planning and Assessment Act, 1979 shall occur within the Development Exclusion Zone, except where authorised under DA2024/1261.

The instrument is to be submitted to Council for authorisation prior to construction certificate. For reference the Biodiversity Management Plan is to be annexed to the instrument. The approved instrument to be registered on the title prior to the issue of the Subdivision



Certificate and lodgement with NSW Lands Registry.

Reason: To protect native vegetation proposed for retention in accordance with relevant Natural Environment LEP/DCP controls.

17. 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.

18. Required screen planting

Screen planting shall be erected along the northern boundary for the area of the boundary directly adjacent to the tennis court, swimming pool and cabana.

The planting shall be in accordance with the following:

- a) the selected planting is to comprise of species capable of attaining a height of 3-5 metres at maturity,
- b) plants are to be installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- c) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

Reason: To maintain environmental amenity.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with the Arboricultural Impact Assessment dated 1/08/2024 prepared by Advanced Treescape Consulting and AS4970-2009 Protection of trees on development sites.

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

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Principal Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing trees have been carried out satisfactorily to ensure no impact to the



health of the trees. 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

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment dated 1/08/2024 prepared by Advanced Treescape Consulting as listed below:

- i) Trees numbered 1, 3, 5, 6, 7, 8, 9, 10
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised building works.

21. Temporary Protection Fencing – Exclusion Zones

Prior to the commencement of any works onsite, temporary mesh construction fencing is to be erected surrounding areas of retained native vegetation on the site as mapped in the approved Biodiversity Management Plan.

Details demonstrating compliance must be prepared by the Project Ecologist and submitted to the Principal Certifier prior to any commencement.

Reason: To protect native vegetation.

22. Unexpected Finds Protocol

A site specific 'Unexpected Finds Protocol' is to be made available for reference for all occupants and/or site workers in the event unanticipated contamination is discovered. The 'Unexpected Finds Protocol' must be created by an appropriately qualified and experienced environmental consultant.

Details are to be provided to the Principal Certifier

Reason: To ensure any unexpected finds are managed safely and appropriately.

DURING BUILDING WORK

23. Requirement to notify about new Acid Sulfate Soils evidence

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifier and a report be obtained from a suitably qualified person. Any recommendations provided by the report are to be complied with during works.

Reason: To protect the environment.



24. Site Contamination

All stockpiles of potentially contaminated soil must be stored in a secure area on the site (no greater than 48 hours) so as not to cause pollution or public health risk until disposed of at a waste facility. All contaminated soil removed from the site must be disposed of at a waste facility that can lawfully receive that waste and must be done in accordance with all relevant Acts, Regulations and Guidelines. Copies of all test results and disposal dockets must be retained for at least 3 years and be made available to authorised Council officers on request.

Note: The following Acts and Guidelines applied at the time of determination: Protection of the Environment Operations Act 1997; and Environment Protection Authority's Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes (1999).

Reason: To protect human health and the environment.

25. Protection of Landscape Features and Sites of Significance

All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

26. 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 the Arboricultural Impact Assessment dated 1/08/2024 prepared by Advanced Treescape Consulting and AS4970-2009 Protection of trees on development sites,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
 - 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 the Project Arborist on site,



- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with the Project Arborist including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must:
 - i) be in place before work commences on the site, and
 - ii) be maintained in good condition during the construction period, and
 - iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by the Project Arborist as compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

27. Condition of Trees

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to or by seeking arboricultural advice from the Project Arborist during the works.

In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.



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

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

Reason: Protection of trees.

28. **Compliance with Ecologist's Recommendations – During Construction**

All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Management Plan (Environmental Services and Education, November 2024) are to be implemented at the appropriate stage of development.

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

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

29. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

30. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

31. **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.

32. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

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

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



Reason: To protect the receiving environment.

33. No Access Through Land Owned or Managed by Council

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

Reason: Public safety, landscape amenity and tree protection.

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

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

Reason: Public safety and environmental protection.

35. Protection of Council's Public Assets

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

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

The Asset Protection Zone (APZ) shall be within the subject property, as proposed, and as defined by boundaries and shall not encroach into adjoining properties including public reserve land.

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

36. 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.

37. Requirement to Notify about New Contamination Evidence

Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifier.



Reason: To protect human health and the environment.

38. Soil Removal and Classification

Any soils requiring excavation and removal from the site must be classified in accordance with "Waste Classification Guidelines Part 1: Classifying Waste" NSW EPA (2014);

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

Reason: To ensure that soils is removed in an appropriate manner.

39. Aboriginal Heritage

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Planning, Housing and Infrastructure.

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the Department of Planning, Housing and Infrastructure.

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

40. Wastewater system compliance

All recommendations and required works as contained within the report by GSL Environmental job reference #: 143124, dated: 16th September 2024 being implemented.

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

Reason: To ensure the wastewater disposal system is compliant and will not create a risk to public health.

41. Existing septic tank to be decommissioned

The existing septic tank is to be decommissioned in accordance with the requirements of NSW Health "Advisory Note 3 - Destruction, Removal or Reuse of Septic Tanks, Collection Wells, Aerated Wastewater Treatment Systems (AWTS) and other Sewage Management Facilities (SMF)".

Details confirming compliance with this requirement are to be supplied to the Principle Certifier.

Reason: To ensure removal of redundant systems and promote public health.

42. Pool backwash

Pool backwash must be managed separately from the wastewater system and wastewater land application areas.

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

**43. Required Tree Planting**

Trees shall be planted in accordance with the following:

- a) 8 x locally native trees shall be planted within the property to achieve at least 10 metres height at maturity, and in accordance with the following:
 - i) tree planting shall be a minimum pre-ordered planting size of 25 litres; may be selected from Northern Beaches Council's Native Plant Species Guide - Narrabeen Ward; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
 - ii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- b) Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

44. Landscape Completion

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

- a) landscape works are to be contained within the legal property boundaries,
- c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans and conditions of consent,
- f) 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,
- g) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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

Reason: Environmental amenity.

45. Condition of Retained Vegetation

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,



- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

46. Protection of Habitat Features – Certified by Ecologist

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

Written details demonstrating compliance are to be certified by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

47. Replacement of Canopy Trees

At least 8 locally native canopy trees are to be planted on the site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with the Native Planting Guide available on Council's website.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

48. No Weeds Imported On To The Site

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

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

49. Priority Weed Removal and Management

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

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

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

50. 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.

51. **Wastewater System**

Prior to the issuing of an Occupation Certificate, a copy of a s68 (Local Government Act 1993) approval to operate the wastewater system, and the wastewater system must be activated and effectively operating to the satisfaction of the Principal Certifier.

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

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

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

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

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

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

Reason: To protect native wildlife and habitat.

53. **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.

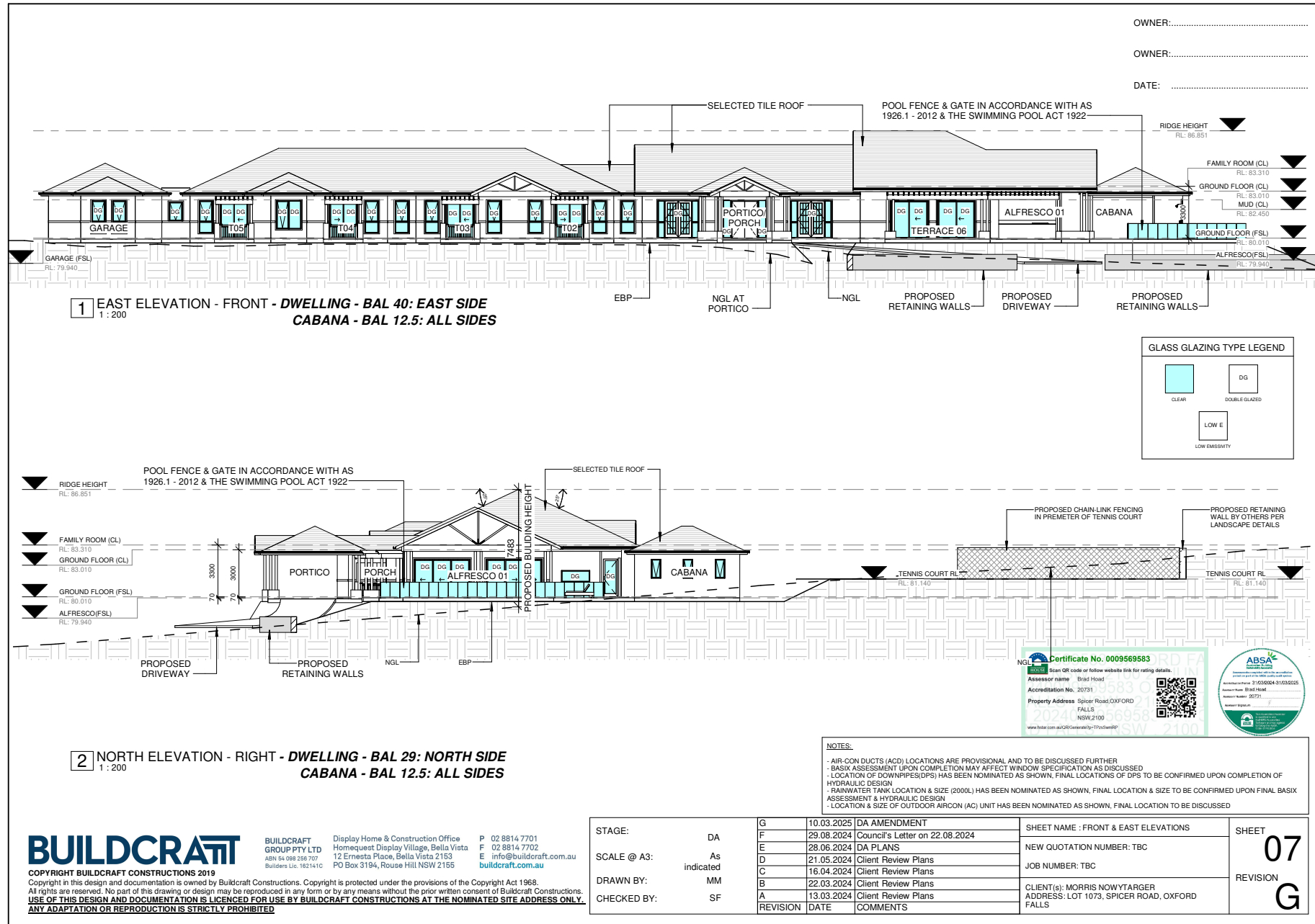
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

54. **Artificial Lighting**

No artificial lighting or illumination is permitted to the proposed tennis court.

Reason: To preserve amenity of adjoining land

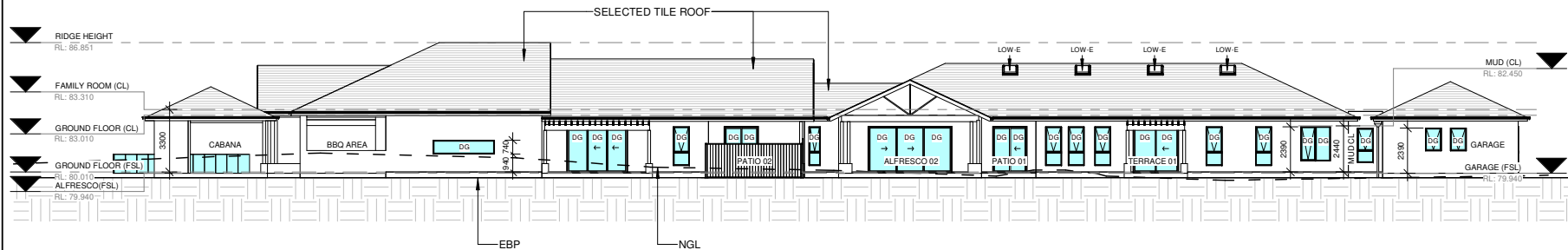
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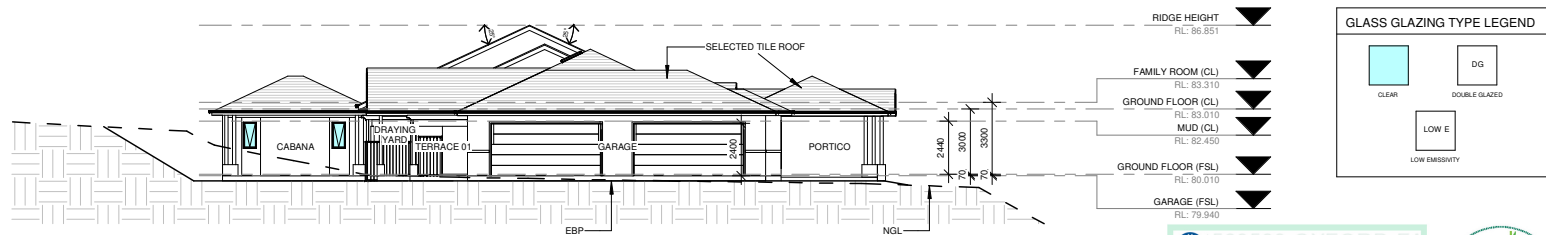
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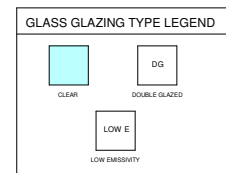
DATE:



1 WEST ELEVATION - REAR- DWELLING - BAL 40: WEST SIDE
CABANA - BAL 12.5: ALL SIDES
 1 : 200



2 SOUTH ELEVATION - LEFT - DWELLING - BAL 40: SOUTH SIDE
CABANA - BAL 12.5: ALL SIDES
 1 : 200

**NOTES:**

- AIR-CON DUCTS (ACD) LOCATIONS ARE PROVISIONAL AND TO BE DISCUSSED FURTHER
- BASIC ASSESSMENT UPON COMPLETION MAY AFFECT WINDOW SPECIFICATION AS DISCUSSED
- LOCATION OF DOWNPIPES (DPS) HAS BEEN NOMINATED AS SHOWN, FINAL LOCATIONS OF DPS TO BE CONFIRMED UPON COMPLETION OF HYDRAULIC DESIGN
- RAINWATER TANK LOCATION & SIZE (2000L) HAS BEEN NOMINATED AS SHOWN, FINAL LOCATION & SIZE TO BE CONFIRMED UPON FINAL BASIC ASSESSMENT & HYDRAULIC DESIGN
- LOCATION & SIZE OF OUTDOOR AIRCON (AC) UNIT HAS BEEN NOMINATED AS SHOWN, FINAL LOCATION TO BE DISCUSSED

BUILD CRAFT

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STAGE:	DA	G	09.09.2024	Council's Letter on 04.09.2024	SHEET NAME : LEFT & REAR ELEVATIONS	SHEET
		F	02.09.2024	Council's Letter on 22.08.2024		
SCALE @ A3:	As indicated	E	28.06.2024	DA PLANS	NEW QUOTATION NUMBER: TBC	08
		D	21.05.2024	Client Review Plans	JOB NUMBER: TBC	REVISION
		C	16.04.2024	Client Review Plans		G
DRAWN BY:	MM	B	22.03.2024	Client Review Plans		
CHECKED BY:	SF	A	13.03.2024	Client Review Plans	CLIENT(s): MORRIS NOWYTARGER ADDRESS: LOT 1073, SPICER ROAD, OXFORD FALLS	
		REVISION	DATE	COMMENTS		