

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 30 APRIL 2025

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 30 April 2025
via teleconference
Commencing 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 9 April 2025.....	2
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS	4
3.1	DA2024/1619 - 1164 Barrenjoey Road, Palm Beach - Demolition works and construction of a dwelling house including swimming pool	4
3.2	DA2024/1383 - 20 Sunrise Road PALM BEACH - Construction of a secondary dwelling	57
3.3	Mod2024/0705 - 231 Whale Beach Road WHALE BEACH - Modification of Development Consent REV2021/0034 granted for Review of Determination of Application DA2020/0442 for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision	131
3.4	DA2025/0195 - 29 McDonald Street FRESHWATER - Alterations and additions to a dwelling house	181
3.5	DA2025/0179 - 46 Bungaloe Avenue BALGOWLAH - Alterations and additions to a dwelling house including a carport	219

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 9 APRIL 2025

RECOMMENDATION

The Panel notes that the minutes of the Development Determination Panel Meeting held on 9 April 2025 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 DA2024/1619 - 1164 BARRENJOEY ROAD, PALM BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL
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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.

RECOMMENDATION

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| <p>A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.</p> <p>B. THAT Council as the consent authority refuses Development Consent to DA2024/1619 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 1 DP 398353, 1164 Barrenjoey Road PALM BEACH, for the reasons for refusal set out in the Assessment Report.</p> |
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Reporting manager	Adam Richardson
TRIM file ref	2025/253875
Attachments	1 Assessment Report 2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1619
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 1 DP 398353, 1164 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Rama Architects Pty Ltd

Application Lodged:	02/12/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	12/12/2024 to 15/01/2025
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 10.59%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 4,832,317.00
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EXECUTIVE SUMMARY

This development application seeks consent for demolition of the existing single-storey detached dwelling house, and construction of a five-storey dwelling house with swimming pool, and works within the road reserve.

The application is referred to the Development Determination Panel (DDP) due to a 10.59% variation to the development standard set out in Clause 4.3 Height of Buildings of the Pittwater Local Environmental Plan 2014.

The application was notified in accordance with the Northern Beaches Community Participation Plan. During the notification period, one submission was received. Concerns raised in the submission

predominantly relate to the proposed bulk and scale, inconsistency with the character of the zone and locality, amenity impacts, tree removal, geotechnical hazards, and construction impacts.

Within this report, detailed assessment is given to a number of matters, and ultimately results in a recommendation for refusal. The proposed development is not compliant with the building height, front building line, building envelope and retaining walls controls of the Pittwater LEP 2014 and Pittwater 21 DCP. The proposed development results in excessive bulk and scale, excessive excavation (on the subject site and public road reserve) and excessive tree and understorey removal (on the subject site and public road reserve).

The proposed development includes works within the public road reserve, including pedestrian access stairs, bin storage area, landscaped roof over the driveway, and multiple retaining walls. These matters are not supported with respect to their bulk and scale, and their reliance on excessive excavation and tree removal. The works are also of a type and scale that creates unreasonable and unacceptable privatisation of public land.

This report concludes with a recommendation that the DDP **refuse** the development application.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for demolition of the existing dwelling house and ancillary structures, and construction of a new dwelling house, as follows:

- Garage floor: New driveway, bin storage area, pedestrian access stairs, double garage with turning area, storage, entry foyer, lift, and stairs,
- Services floor: Gym, laundry, plant/services room, toilet, foyer, lift, and stairs,
- Ground floor: Dwelling entry, two north-facing balconies rumpus room, toilet, two bedrooms (one with an ensuite), bathroom, lift, and stairs,
- First floor: Two bedrooms (each with an ensuite and north-facing balcony), office with ensuite, storage, lift, and stairs,
- Second floor: Open-plan kitchen and dining room with north-facing terrace, gas fireplace, lounge room, storage, bathroom, lift, stairs, and pool with surrounding terrace,
- Roof: Green roof with solar panels, roof terrace with a gas fire place and balustrade, and
- Landscaping works.

The following proposed works are located beyond the front boundary of the subject site within the Barrenjoey Road reserve, namely:

- Pedestrian access stairs,
- Bin storage area,
- Landscaped roof over the driveway, and
- Retaining walls.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Assessment - Concurrence - Roads and Maritime Service - SEPP (Transport and Infrastructure) 2021, s2.118

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation

Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater Local Environmental Plan 2014 - 7.10 Essential services

Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality

Pittwater 21 Development Control Plan - B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites

Pittwater 21 Development Control Plan - B1.4 Aboriginal Heritage Significance

Pittwater 21 Development Control Plan - B4.17 Littoral Rainforest - Endangered Ecological Community

Pittwater 21 Development Control Plan - B4.22 Preservation of Trees and Bushland Vegetation

Pittwater 21 Development Control Plan - B5.15 Stormwater

Pittwater 21 Development Control Plan - B6.2 Internal Driveways

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

Pittwater 21 Development Control Plan - B6.5 Access Driveways and Works on Road Reserves on or Adjacent to a Main Road

Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill

Pittwater 21 Development Control Plan - B8.5 Construction and Demolition - Works in the Public Domain

Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan

Pittwater 21 Development Control Plan - C1.1 Landscaping

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - C1.23 Eaves

Pittwater 21 Development Control Plan - C1.24 Public Road Reserve - Landscaping and Infrastructure

Pittwater 21 Development Control Plan - D12.1 Character as viewed from a public place

Pittwater 21 Development Control Plan - D12.5 Front building line

Pittwater 21 Development Control Plan - D12.8 Building envelope
 Pittwater 21 Development Control Plan - D12.13 Construction, Retaining walls, terracing and undercroft areas
 Pittwater 21 Development Control Plan - D12.14 Scenic Protection Category One Areas

SITE DESCRIPTION

Property Description:	Lot 1 DP 398353 , 1164 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of one allotment located on the southern side of Barrenjoey Road, Palm Beach. The site is generally regular in shape with a frontage of 20.115 metres along Barrenjoey Road, a maximum depth of 38.17 metres, and a gently splayed rear boundary. The site has a surveyed area of 745m². The site is located within the C4 Environmental Living zone and accommodates a single-storey detached dwelling house. The subject site does not currently have vehicular access to Barrenjoey Road, but includes steps from the road reserve to the dwelling house. The site steeply slopes down approximately 18 metres from south (rear) to north (front). The front half of the site (surrounding the dwelling house) is landscaped The rear half of the site is densely vegetated and contains some rock outcrops. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by detached dwelling houses in landscaped and vegetated settings.

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 N0055/09 for additions to the dwelling (a driveway and hardstand parking area) was withdrawn by the Applicant on 27 October 2009.

APPLICATION HISTORY

DA2024/1619 was lodged on 2 December 2024. On 19 February 2025, Council wrote to the Applicant raising concern with respect to built form controls, amenity, character, works in the road reserve, landscaping, stormwater management, and vehicular access. On 4 March 2025, a meeting between Council and the Applicant was held to discuss the matters raised in Council's letter. At the meeting, draft conceptual amendments were discussed. However, no amended plans or documents were formally lodged. On 31 March 2025, the Applicant requested Council proceed with assessment and determination of the application as submitted (that is, without amendment).

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	There are no current draft environmental planning instruments.

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being addressed via a condition of consent, if the development is approved. <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 number of concerns, including (but not limited to) with respect to built form controls, amenity, character, works in the road reserve, landscaping, stormwater management, and vehicular access. No amended information was received. These matters are included as reasons for refusal. <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 can be addressed via a condition of consent if the application is to be approved. <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 can be addressed via a condition of consent if the application is to be approved. <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	(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.

Section 4.15 Matters for Consideration	Comments
and economic impacts in the locality	(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 unsuitable for the proposed development, for the reasons detailed throughout this report.
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	This assessment has found the proposal to be contrary to the relevant requirements of the PLEP 2014 and P21 DCP, will result in a development that would create an undesirable precedent, would undermine the desired future character of the area and be contrary to the expectations of the community. Further, the proposed structures in the road reserve are of a form and scale that create unreasonable and unacceptable privatisation of public land. With regard to the above, the development, as proposed, is not considered to be in the public interest. This has been included as a reason for refusal.

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 12/12/2024 to 15/01/2025 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 1 submission/s from:

Name:	Address:
Mrs Jennifer Florence Wilson Mr Nick Wilson	Top Cliff, 50A Sunrise Road PALM BEACH NSW 2108

The following issues were raised in the submissions:

Bulk and Scale / Character / Privacy / Precedent

Submissions raised concern that the proposed development:

- *is excessive in bulk and scale,*
- *is inconsistent with the character of the locality,*
- *would result in loss of visual and acoustic privacy to 50A Sunrise Road, and*
- *would set an undesirable precedent.*

Comment:

The proposed development is of excessive bulk and scale, is inconsistent with the character of the locality, would result in unreasonable visual privacy impacts to adjoining properties, and would set an undesirable precedent. These matters are included as reasons for refusal.

Tree Removal and Compensatory Planting

Submissions raised concern about tree retention and compensatory tree planting species selection.

Comment:

The proposed development requires unacceptable tree removal on both the subject site and road reserve. This is included as a reason for refusal. Whilst Council's Landscape Officer is not supportive of the proposed development with respect to tree removal, no concern was raised by the officer regarding the species of trees proposed for compensatory planting. Should development consent be granted, control of tree planting species can be addressed by way of condition of consent and does not warrant refusal of the application.

Geotechnical Hazard and Landslip Risk

Submissions raised concern about geotechnical hazard and landslip risk as a result of the proposed earthworks.

Comment:

The proposed development is supported by a geotechnical assessment prepared by a suitably qualified professional, that demonstrates the proposed development is of acceptably low risk with respect to geotechnical hazard and landslip risk. This matter does not warrant refusal of the application.

Stormwater Runoff

Submissions raised concern that the proposed development may result in unreasonable stormwater runoff in the road reserve.

Comment:

The application has been reviewed by Council's Development Engineer, who has raised concern with respect to stormwater management, as detailed in the section of this report relating to referrals. This is included as a reason for refusal.

Construction Hours and Noise

Submissions raised concern that about hours of demolition and construction and consequent noise and vibration impacts.

Comment:

Should development consent be granted, provisions of the *Protection of Environmental Operations Act*

1997 would apply to ensure that noise and vibration impacts during demolition and construction would not be unreasonable. This matter does not warrant refusal of the application.

Impact to Utilities/Services

Submissions raised concern about impact to and relocation of utilities/services, such as NBN.

Comment:

Should development consent be granted, the owner/applicant would 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. This matter does not warrant refusal of the application.

Access to Adjoining Property

Submissions noted that permission for access to the adjoining property at 50A Sunrise Road is not granted for construction.

Comment:

Should development consent be granted, permission to access adjoining properties for the purpose of demolition or construction of the development must be granted by the relevant landowner. This matter does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	Supported without conditions The plans accompanying the proposal note a gas fireplace. As a gas fireplace does not have the potential for smoke and odour impacts, Environmental Health has no objection to the proposal.
Landscape Officer	Not supported Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12 Palm Beach Locality The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone. The following PDGP outcomes are noted: • C1.1 "A built form softened and complemented by landscaping", • D12.10 "The bulk and scale of the built form is minimised" and "Vegetation is retained and enhanced to visually reduce the built form", • D12.14 "To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with

Internal Referral Body	Comments
	built form being a secondary component" and "Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve". Landscape referral raises the following concerns: • Landscape proposal ◦ The proposal is heavily reliant on road reserve planting to satisfy the PDCP outcomes and controls, and in particular softening the built form. The landscape proposal must be able to satisfy the outcomes and controls of the PDCP on private land. Whilst there is no objection to the road reserve planting, any road reserve planting shall be supplementary and approved under the correct pathway (minor encroachment application or S138 application), ◦ The Development Engineer's comments are noted and the removal of the on slab landscape planters in the road reserve will result in a wall of approximately 4 metres above the garage (plus balustrade). This will not be an acceptable solution and terracing with planting or other means (wholly contained within the legal property boundaries) will be required to reduce the height and visual impact of this wall or any wall presenting to the street (shrubs, groundcovers, cascading plants etc. shall be utilised to soften built form), ◦ The pedestrian entry stairs are a dominant feature when viewed from the streetscape and their design shall consider a better integration into the landscape, ◦ As outlined in Council's Development Application Lodgement Requirements please include surface treatments on the landscape plan (i.e. lawn, garden areas, paving, stepping stones etc.), ◦ On slab landscape planters will need to meet minimum soil depth requirements; 300mm for groundcovers and 600mm for shrubs (not including required drainage layers, waterproofing etc.). The green roof does not have sufficient soil depth for the planting proposed, ◦ It is suggested the landscape design be completed by a suitably qualified professional (i.e. landscape architect/landscape designer) to ensure the outcomes of the PDCP are achieved and to allow for a suitable landscape outcome. • Road reserve excavation ◦ Drawing 209M2024-V1.1-SP (Construction Traffic Management Plan by TTPA) shows a MRV utilising the road reserve in front of the property for its turning manoeuvre. This indicates complete excavation (or near complete excavation) of the road reserve fronting

Internal Referral Body	Comments
	the property which may require additional retaining structures. Drawing DA-502 (architectural plans by Rama) shows the extent of excavation proposed which is contrary to the required turning path. Please clarify as this may impact tree retention in the road reserve. • Tree removal ◦ As some design changes will be required further comment regarding trees will be provided upon receipt of further information. It is noted priority should be given to retention of prescribed (protected) trees within the property boundaries and native trees in the road reserve. Any significant design changes will warrant an updated Arboricultural Impact Assessment. Landscape referral can continue their assessment upon receipt of further information. <u>Assessing Officer's Comment:</u> These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. These matters are included as reasons for refusal.
NECC (Bushland and Biodiversity)	<i>Not supported</i> The following biodiversity-related provisions apply to the subject site: • Pittwater LEP Clause 7.6 - Biodiversity Protection • Pittwater DCP Clause B4.17 - Littoral Rainforest Endangered Ecological Community The proposal will result in the removal of more than half of the existing native prescribed (i.e. protected) trees on the subject site and adjoining road reserve, in addition to the removal of understorey vegetation and five small native trees within the road reserve. It is noted that additional information/amendments regarding the driveway and garage design is to be requested, and that any amendments will likely result in a different outcome in terms of proposed vegetation impacts (as reflected in an amended arborist report). The applicant should be aware of the requirement to demonstrate compliance with the applicable biodiversity objectives, in particular: • Development is to be designed, sited and will be managed to avoid any significant environmental impact • Development shall not result in a net loss of native canopy trees. Measures that have and will be undertaken to minimise impact on native trees and vegetation must be clearly demonstrated. The

Internal Referral Body	Comments		
	Biodiversity referral will recommence upon receipt of this and other requested additional information. <u>Assessing Officer's Comment:</u> These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. These matters are included as reasons for refusal.		
NECC (Development Engineering)	<i>Not supported</i> The proposal is for the construction of a new dwelling including a new vehicular crossing on Barrenjoey Road. <u>Stormwater</u> The submitted stormwater plan proposes discharge to the kerb in Barrenjoey Road via an OSD system. The OSD tank is located within the garage which is not acceptable. OSD tanks are to be located with 24/7 access for maintenance purposes. No calculations are provided for the OSD system The plans are to show all calculations including PSD, post developed flows from the OSD and bypass flows for all storms. <u>Access</u> Insufficient information has been provided with regard to the proposed access driveway. The Applicant shall provide engineering long-sections at both edges of the proposed access driveway to the proposed garage and demonstrate compliance with AS2890.1. The driveway shall incorporate one of Council's standard vehicle crossing profiles. The proposed roof over the driveway with deep soil are in the road reserve is not supported. These structures are to be deleted. The proposed access stairs is acceptable however the proposed width of the stairs seem excessive. Amended plans are to be provided for further assessment. <i>Note to Planner: As Barrenjoey Road is a state road and the proposal includes driveway and stormwater connection to Barrenjoey Rd, concurrence from TfNSW is required prior to Development Engineering providing conditions.</i> <u>Assessing Officer's Comment:</u> These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. These matters are included as reasons for refusal.		
Strategic and Place Planning (Heritage Officer)	<i>Not supported</i> <table><tr><td>HERITAGE COMMENTS</td></tr><tr><td>Discussion of reason for referral</td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral
HERITAGE COMMENTS			
Discussion of reason for referral			

Internal Referral Body	Comments	
	This application has been referred to Heritage as it is within the vicinity of two heritage items: Item 2270091 - "Collins House" - 1170 Barrenjoey Road, Palm Beach Item 2270152 - "Windyridge" (house) - 50 and 50B Sunrise Road, Palm Beach	
	Details of heritage items affected	
	Details of the heritage items, as contained within the Heritage Inventory, are: Item 2270091 - "Collins House" <u>Statement of Significance</u> Collins House, 1170 Barrenjoey Road, Palm Beach, built in 1938 for the photographer James Andriesse, has historic and aesthetic significance as a good example of Late Twentieth Century Sydney Regional Architecture. Key modernist features are free asymmetrical massing, flat roof, exposed structure, open plan, horizontal structural emphasis and retention and adaptation to the natural setting and use of natural materials. The residence portrays the early stages of a significant movement by Sydney architects to adapt the International Style and design theory to a local, regional language. The residence is a good example of Arthur Baldwinson's work and is associated with the development of the Northern Beaches as a holiday destination.	
	Item 2270152 - "Windyridge" (house) <u>Statement of Significance</u> "Windyridge", built in 1919 to the design of Wilshire and Day and built by Charles Verrills as a holiday house and modified by his son Frederick Verrills, has historic and aesthetic significance as a good example of vernacular weekender typical of the early Pittwater subdivisions. The architectural heritage of the area is characterised by this house form which, in Pittwater, evolved as a structure subordinate to the landscape and which utilised natural materials to harmonise with the surroundings and lessen their visual impact. The weekender is representative of the popularity of cottage retreats within Pittwater built of local natural materials to simple designs with traditional construction techniques.	
	Other relevant heritage listings	
	SEPP (Biodiversity and Conservation) 2021	No

Internal Referral Body	Comments		
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	Yes	"Collins House" on Register
	Other	No	
	Consideration of Application		
	The proposal seeks consent for the demolition of the existing c.1900 dwelling on site and the construction of a new multi-level dwelling, with pool and associated landscaping. The proposed building is over 5 levels and presents a 4 storey house when viewed from Barrenjoey Road. The street presence of the proposed stairs, driveway and garage, along with the overhang above and the surrounding walls/retaining walls, are considered to be the dominant site feature when viewed from the public domain. Heritage recommends the landscaping to be integrated with the design of the driveway and garage to screen their visual impact. A driveway ramp that is similar to the neighbouring buildings (e.g. "Collins House" at 1170 Barrenjoey Road) that follows the slope, integrated into the natural landscape, rather than a straight ramp, could help to minimise the visual impact and also allow a higher level garage to minimise the disturbance by reducing the level of excavation. Pittwater DCP 2021 require protection of the natural landforms with minimal disturbance. Section D12.13 "Construction, Retaining walls, terracing and undercroft areas" of the Pittwater DCP require: <i>Where retaining walls and terracing are visible from a public place, preference is given to the use of sandstone or sandstone like materials.</i> <i>Where retaining walls (for vehicular access) have been erected on the eastern side of Barrenjoey Road, a consistent treatment needs to be adopted (e.g., cement blocks or sandstone walling), to help lessen the impact of these walls. The area between the wall and the road shall be suitably landscaped to help screen it from view without limiting site lines to the street.</i> It is noted that some retaining walls, overhang and planters are proposed within the area between the road reserve and the front boundary. These elements are to be proposed only where they are necessary for the construction and their visibility is to be minimised from the public domain, to preserve the character of the streetscape and to compliment the heritage item in the vicinity. Therefore, Heritage require amendments to minimise the visual impact, and a detailed/cross referenced materials and colour		

Internal Referral Body	Comments
	scheme to reflect the above control of the DCP. <u>Consider against the provisions of CL5.10 of PLEP 2014.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No - must be addressed in SEE Has a Heritage Impact Statement been provided? No <u>Assessing Officer's Comment:</u> These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. These matters are included as reasons for refusal.
Traffic Engineer	<i>Not supported</i> The traffic team has reviewed the following documents: - Plans (Master Set) - Revision 01, designed by Rama Architects, dated 5/11/2024. - The Statement of Environmental Effects prepared by Northern Beaches Planning, dated November 2024. - Construction Traffic Management Plan, prepared by Transport and Traffic Planning Associates (TTPA), issue A, dated November 2024 (ref: 209/2024). - Construction Management Plan, prepared by Promena Projects, revision A, dated 03/10/2024 (project number T974). It is noted that the proposed development is for a dwelling house consisting of 4 bedrooms. The Pittwater DCP applies to the subject site. According to the DCP, a dwelling house containing two or more bedrooms require a minimum of 2 car spaces. The architectural plans show a double garage with offstreet parking for two vehicles and a turn area to facilitate forwards ingress and egress from the site to Barrenjoey Road. If this is the intent, this would be supportable as forwards entry and egress to/from the property is considered necessary given the volumes of traffic and sight line constraints at the location. The CTMP prepared by TTP by contrast on page 24 of that document shows 4 car spaces on the property which would not allow for forwards entry and exit from any of the spaces. This would be unacceptable if this was the intent. The total number of proposed car parking spaces must be clarified. Furthermore, swept path plots for a B85 vehicle entering and exiting all proposed parking spaces in a forwards direction to/from Barrenjoey Road must be provided. Vehicular access is provided off Barrenjoey Road, via a new driveway. The provided architectural plans do not provide details relating to the width of the proposed driveway, the dimensions of

Internal Referral Body	Comments
	proposed garage, Reduced levels on the driveway or sightline triangles at the point where the driveway meets Barrenjoey Road etc. While grades are shown on the driveway, the lengths for these grades are not provided and it is not possible from the information on the plans to confirm if the driveway profile is acceptable. Also, as the site is located near a bend and on a densely vegetated steep nature strip, there are concerns relating to visibility a sight distance assessment to confirm sight line requirements in terms of AS2890.1 clause 3.2.4 can be met. Therefore, the proposed development requires further supporting documentation It should be noted that the referral from Council's Development Engineering team has requested for long sections at both edges of the proposed access driveway to the garage and demonstrate compliance with AS2890.1. Furthermore, the provided long sections should also contain ground clearance plot to show that the B99 vehicle does not scrape when using the proposed driveway. Conclusion The application is not supported at this stage with further information as outlined above required prior to further consideration of the proposal. <u>Assessing Officer's Comment:</u> These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. These matters are included as reasons for refusal.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported, subject to conditions The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations can be included as a condition of consent if the application is to be approved.
Aboriginal Heritage Office	Supported, subject to conditions No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. An inspection was undertaken on 10th January 2025. A sandstone overhang was identified. If the sandstone overhang is excluded from the proposed development and future impacts, then the Aboriginal Heritage Office would not foresee any further Aboriginal heritage constraints on the proposal. If the sandstone overhang were be impacted by the proposed development then the Aboriginal Heritage Office would recommend a

External Referral Body	Comments
	preliminary inspection by a qualified Aboriginal heritage professional prior to any further development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted. <u>Assessing Officer's Comment:</u> The proposed development includes substantial alteration to the rock overhang, and the application does not provide certainty as to whether the proposed development will have an impact on items of Aboriginal heritage significance in that regard. This matter would require resolution prior to issuing development consent. This is included as a reason for refusal.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

Housing and Productivity Contribution

The Housing and Productivity Contribution is not payable for this application, in accordance with the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023*.

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1773383S dated 18 November 2024). A condition of consent can be included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate, if the application is to be approved.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations can be included as a condition of consent if the application is to be approved.

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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	Max. 8.5m	Max. 9.4m	10.59%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	No
5.10 Heritage conservation	No
7.1 Acid sulfate soils	Yes

Clause	Compliance with Requirements
7.2 Earthworks	No
7.6 Biodiversity protection	No
7.7 Geotechnical hazards	No
7.10 Essential services	No

Detailed Assessment

Zone C4 Environmental Living

With respect to the proposed development overall and its variation to the development standard set out by Clause 4.3 Height of Buildings of the PLEP 2014, the objectives of the C4 Environmental Living zone are addressed as follows:

To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.

Comment:

The subject site contains special ecological and aesthetic values in that it contains prescribed/protected and native vegetation. The proposed development is not low-impact by virtue of its excessive bulk and scale, excessive excavation (on both the subject site and the road reserve), and excessive tree removal (on both the subject site and the road reserve).

To ensure that residential development does not have an adverse effect on those values.

Comment:

The proposed development has adverse impact on the subject sites special ecological and aesthetic values resulting from the proposed bulk and scale, excavation, and tree removal.

To provide for residential development of a low density and scale integrated with the landform and landscape.

Comment:

The proposed development results in non-compliance with the applicable building height, front setback, and building envelope controls, and relies on substantial and unreasonable excavation and tree removal on both the subject site and the road reserve. The proposed development is not of a design or scale that is integrated with the landform or landscape.

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

Comment:

The proposed development relies on substantial removal of trees on the subject site and the road reserve, unreasonably impacting on the classification of the site as a wildlife corridor.

The inconsistency of the proposed development with the zone objectives is included as a reason for refusal.

4.3 Height of buildings

Clause 4.3 (2D) provides that development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if:

(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and

Comment:

The proposed development includes works above the 8.5 metre height of buildings development standard, up to a maximum height of 9.4 metres. The non-compliant elements are set towards the northern edge of the dwelling house, being:

- The roof over the second floor terrace,
- The second floor roof slab above the kitchen, and
- The green roof.

The elements listed above are substantial in structure and are part of the building proper, rather than ancillary elements such as eaves, gutters, lightweight balustrades, and the like. Given this, the portion of the building above the 8.5 metre height of buildings development standard is not minor.

(b) the objectives of this clause are achieved, and

Comment:

The objectives of Clause 4.3 Height of Buildings are addressed as follows:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment:

Per A4.12 Palm Beach Locality of the P21 DCP, dwelling houses are to be a maximum of two storeys in height, integrated with the landform and landscape. The proposed development is five storeys in height, where four of those storeys will be readily visible from the public domain. The proposed development is not well-integrated with the landform in that it relies on substantial and unnecessary excavation to a maximum depth of 13.307 metres, while also breaching the height of buildings development standard. The proposed development is not well-integrated with the landscape in that its landscaped presentation to the public domain along Barrenjoey Road relies heavily on planting on structures, and in that its bulk prevents more substantial vegetation to soften its form. The proposed development is therefore inconsistent with the desired character of the Palm Beach locality.

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

Comment:

The proposed development is set to a maximum of RL 35.35 to the dwelling roof and approximately RL 36.35 to the roof terrace balustrade, and will appear to the public domain as four storeys. Surrounding development in the visual catchment of the subject site are of lesser bulk and scale than the proposed development. The adjoining dwelling house to the east at 1166 Barrenjoey Road is set to a maximum RL of 34.89, presenting as three storeys to the public domain. The adjoining dwelling house to the west at 1162 Barrenjoey road is set to a maximum RL of 38.35. Whilst this is a higher maximum than the proposed development, the house in question is partly two and partly three storeys in height, set into higher topography, so is of lesser scale than the proposed development.

It is noted that approval for a dwelling house was recently granted at 1168 Barrenjoey Road to the east, under DA2023/0577. The dwelling house under DA2023/0577 is compliant with the maximum height of buildings development standard, and will appear as three storeys from the public domain. The garage entryway at the street frontage in the road reserve approved under DA2023/0577 is well-integrated into the road reserve and suitably retains the landscaped

setting of the area. The same cannot be said of the proposed development subject of this assessment.

The proposed development is not compatible or consistent with the height and scale of surrounding and nearby development.

- (c) *to minimise any overshadowing of neighbouring properties,*

Comment:

Given the north-south orientation of the lot and adjoining lot, and the topography of the land, the proposed development provides for compliant solar access in accordance with C1.4 Solar Access of the P21 DCP.

- (d) *to allow for the reasonable sharing of views,*

Comment:

The proposed development is designed and sited so as to provide for reasonable view sharing for occupants of the subject site and surrounding sites.

- (e) *to encourage buildings that are designed to respond sensitively to the natural topography,*

Comment:

The proposed development relies on substantial excavation to a maximum of 13.307 metres, for the purpose of:

- Basement garage and turning area, storage, foyer, internal lift and stairs,
- 'Services floor' plant, gym, laundry, toilet, internal lift and stairs, and
- Substantial portions of the ground, first and second floors.

It should be noted the proposed development also includes excavation of the road reserve along Barrenjoey Road for the purpose of the driveway and a bin storage area, as well as above-ground structures in the road reserve, being retaining walls and the roofed driveway entry. These elements are not supported.

Given the depth and extent of excavation proposed and that the proposed dwelling house also breaches the building height, front building line, and building envelope controls of the Pittwater LEP 2014 and Pittwater 21 DCP (that is, the development is excessive above and below ground), the development is not designed in accordance with the underlying outcomes of this control.

- (f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Comment:

The subject site is in the vicinity of two items of local heritage significance, being Collins House at 1170 Barrenjoey Road to the east, and Windyridge at 50 and 50B Sunrise Road, to the south-east. The development application has been reviewed by Council's Heritage Advisor, who is not supportive of the proposed development with respect to its visual impact on those items. Specifically, Council's Heritage Advisor finds that the proposed works in the road reserve are excessive, and that the works are not sufficiently integrated with landscaping.

- (c) *the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*

Comment:

The building footprint is situated on a slope of 28-30 degrees, being 53-57%.

(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

Comment:

The proposed development relies on substantial excavation of the subject site to a maximum of 13.307 metres, as described above, as well as in the road reserve. Given the depth and extent of excavation and fill proposed and that the dwelling house also breaches the maximum height, the development is not designed to take into account the slope of the land, does not sufficiently minimise the need for cut and fill, and does not sufficiently step with the slope of the site. As such, the height dispensation provisions of the LEP at Clause 4.3(2D) are not available.

As the proposal does not satisfy parts (a), (b), and (d) of Clause 4.3 (2D), the 10 metre maximum building height variation does not apply in this case. The proposed development does not achieve the objectives of Clause 4.3, which is included as a recommended reason for refusal.

The variation to the maximum 8.5 metre height of buildings development standard is considered in the section of this report relating to Clause 4.6.

4.6 Exceptions to development standards

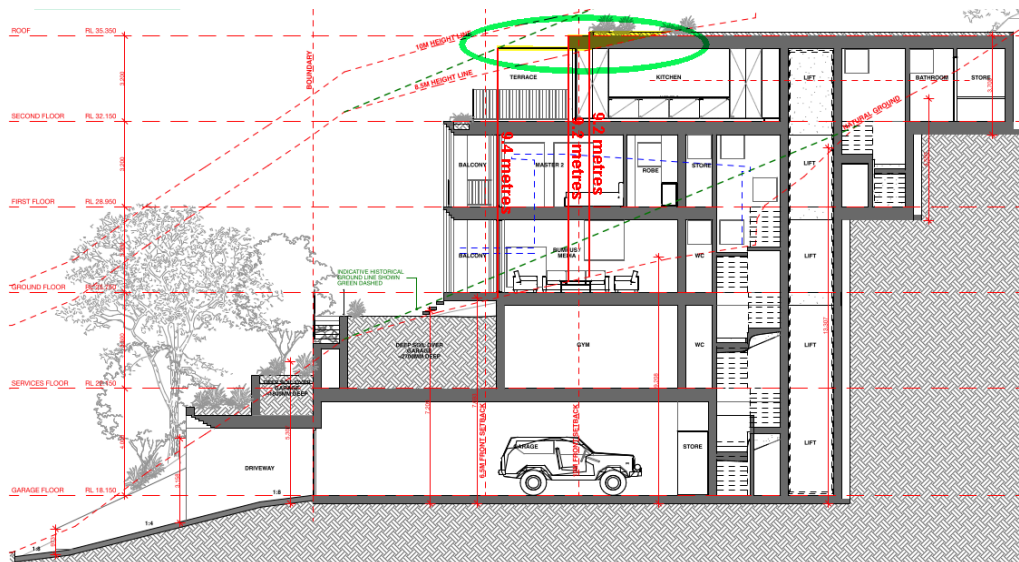
The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 Height of Buildings

Requirement: Max. 8.5 metres

Proposed: Max. 9.4 metres

Percentage of variation: 10.59%



Above: Section plan showing the portion of the development that breaches the height of buildings development standard (highlighted in yellow and circled in green).

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application **is not** accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the PLEP 2014 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.3 is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is not satisfied that the Applicant has demonstrated that compliance with Clause 4.3 is unreasonable or unnecessary in the circumstances of this application for the following reasons:

1. The Applicant has not submitted a written request to vary the development standard and relies upon Clause 4.3 (2D) for compliance.
2. The proposed development is not consistent with the objectives of the C4 Environmental Living zone, nor the objectives of Clause 4.3 Height of Buildings of the PLEP 2014.

(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 Applicant has not submitted a written request to vary the development standard and relies upon Clause 4.3 (2D) for compliance. In the absence of sufficient environmental planning grounds, Council is not satisfied that the Applicant has demonstrated justification for the contravention of Clause 4.3.

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 not satisfied as to the matters set out in Clause 4.6 of the PLEP 2014. As such, per Clause 4.6 (3), development consent must not be granted for the proposed development.

5.10 Heritage conservation

The site is not a heritage item, and is not in the vicinity of a heritage conservation area or archaeological site. However, the subject site is in the vicinity of two heritage items, being Collins House at 1170 Barrenjoey Road to the east, and Windyridge at 50 and 50B Sunrise Road, to the south-east. The development application has been reviewed by Council's Heritage Advisor, who is not supportive of the proposed development with respect to its visual impact on those items. Specifically, Council's Heritage Advisor finds that the proposed works in the road reserve are excessive, and that the works are not sufficiently integrated with landscaping.

These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. These matters are included as reasons for refusal.

7.1 Acid sulfate soils

Clause 7.1 Acid Sulfate Soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map. The proposed development is not anticipated to result in unacceptable risk with respect to acid sulfate soils.

7.2 Earthworks

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

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

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

the locality of the development

Comment:

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

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

Comment:

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

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

Comment:

The excavated material can be suitably processed according to the Waste Management Plan for the development. A condition of consent can be applied requiring any fill to be of a suitable quality, if the application is to be approved.

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

Comment:

The proposed earthworks are excessive in the environmentally constrained context of the site (being a conservation zone). The proposed development also includes non-compliant building height, meaning the site is of excessive bulk and scale above and below ground. This indicates an over-development of the site. The proposed development is unacceptable with respect to amenity (visual privacy) for the reasons detailed in the relevant section of this report.

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

Comment:

The excavated material can be suitably processed according to the Waste Management Plan for the development. A condition of consent can be applied requiring any fill to be of a suitable quality, if the application is to be approved.

(f) the likelihood of disturbing relics

Comment:

The development was referred to the Aboriginal Heritage Office, who found that if the sandstone overhang present on the site were to be impacted by the proposed development, a preliminary inspection by a qualified Aboriginal heritage professional would be required prior to any further development. The proposed development includes substantial alteration to the rock overhang, and the application does not provide certainty as to whether the proposed development will have an impact on items of Aboriginal heritage significance. This matter would require resolution prior to issuing development consent.

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

Comment:

The site is not located in the vicinity of any watercourse, or drinking water catchment. The subject site is zoned C4 Environmental Living, being a conservation zone. The proposed development relies on excessive excavation and includes excessive height, which result in adverse impacts with respect to the natural topography and visual quality of the locality.

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

Comment:

If the application is to be approved, conditions of consent can be applied are included to minimise the impacts of the development.

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

heritage conservation area.

Comment:

The site is not a heritage item, and is not in the vicinity of a heritage conservation area or archaeological site. However, the subject site is in the vicinity of two heritage items, being Collins House at 1170 Barrenjoey Road to the east, and Windyridge at 50 and 50B Sunrise Road, to the south-east. The development application has been reviewed by Council's Heritage Advisor, who is not supportive of the proposed development with respect to its visual impact on those items. Specifically, Council's Heritage Advisor finds that the proposed works in the road reserve are excessive, and that the works are not sufficiently integrated with landscaping.

These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. Accordingly, the proposed development is recommended for refusal with respect to:

- the effect of the proposed development on the amenity of adjoining properties,
- the likelihood of disturbing relics, specifically regarding Aboriginal heritage significance,
- the proximity to, and potential for adverse impacts on, an environmentally sensitive area, and
- the proximity to, and potential for adverse impacts on, the two nearby two heritage items.

7.6 Biodiversity protection

Per subclause (3), before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

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

Comment:

The development application has been assessed by Council's Team Leader of Biodiversity & Planning, who raised concern with respect to the proposed quantum of prescribed (protected) tree removal on the subject site and adjoining road reserve, the quantum of understorey removal, and the removal of five other native trees within the road reserve. These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application to avoid, minimise or mitigate the impacts of the development.

Per subclause (4), before granting development consent, this clause also requires the consent authority to be satisfied that:

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

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

Comment:

Given the above, the consent authority cannot be satisfied that the development is designed, sited and will be managed to avoid significant adverse environmental impact, and development consent must not be granted. This is included as a reason for refusal.

7.7 Geotechnical hazards

Per subclause (3), before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

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

Per subclause (4), development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*
- (b) the consent authority is satisfied that—*
 - (i) the development is designed, sited and will be managed to avoid any geotechnical risk or significant adverse impact on the development and the land surrounding the development, or*
 - (ii) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or*
 - (iii) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.*

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, and stormwater management plans. The application has been reviewed by Council's Development Engineer, who has raised concern with respect to stormwater management and vehicular access, as detailed in the section of this report relating to referrals. These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application to avoid, minimise or mitigate the impacts of the development.

Given the above, the consent authority cannot be satisfied that the development is designed, sited and will be managed to avoid significant adverse impact on the development and the land surrounding the development, and development consent must not be granted. This is included as a reason for refusal.

7.10 Essential services

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

- (a) the supply of water,*

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

Comment:

The subject site is supplied with the above essential services, other than vehicular access. The proposed development retains and relies upon these services.

With respect to vehicular access, the proposed development is unacceptable for the reasons detailed throughout this report, and development consent must not be granted. This is included as a reason for refusal.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
Front building line	Min. 10m	Entry stairs: 0m	100%	No
		Dwelling stairs: 4.1m	59%	No
		Dwelling: Min. 4.9m	51%	No
Rear building line	Min. 6.5m	Min. 9.1m	-	Yes
Side building line	E: Min. 2.5m	Min. 2.5m	-	Yes
	W: Min. 1m	Min. 1m	-	Yes
Building envelope	3.5m	E: Max. 2.2m outside envelope	36.67%	No
		W: Max. 1.3m outside envelope	24.07%	No
Landscaped area	Min. 60% (447m ²)	60.43% (450m ² incl. 6% hard area variation)	-	Yes

Works are also proposed beyond the front boundary of the subject site in the Barrenjoey Road reserve, namely:

- Pedestrian access stairs,
- Bin storage area,
- Landscaped roof over the driveway, and
- Retaining walls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.12 Palm Beach Locality	No	No
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	No	No
B1.4 Aboriginal Heritage Significance	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	No	No
B4.22 Preservation of Trees and Bushland Vegetation	No	No
B5.15 Stormwater	No	No
B6.2 Internal Driveways	No	No
B6.3 Off-Street Vehicle Parking Requirements	No	No
B6.5 Access Driveways and Works on Road Reserves on or Adjacent to a Main Road	No	No
B8.1 Construction and Demolition - Excavation and Landfill	No	No
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	No	No
B8.5 Construction and Demolition - Works in the Public Domain	No	No
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	No
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	No	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	No	No
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	No	No
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	No
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	No
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	No	No
D12.14 Scenic Protection Category One Areas	No	No

Detailed Assessment

A4.12 Palm Beach Locality

As detailed throughout this assessment report, the proposed development is not consistent with the following matters with respect to the Palm Beach Locality:

- *Dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape*, given the proposed development is five storeys in height, and relies on excessive excavation and tree removal.
- *Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form*, given the proposed development breaches the maximum height of buildings development standard, the front building line control, and the building envelope control.
- *Existing and new native vegetation, including canopy trees, will be integrated with the development*, given the extent of tree removal and excavation.
- *A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land*, given the extent of tree removal and excavation.
- *The locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment*, given the extent of protected and native tree removal.

This is included as a reason for refusal.

B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites

The subject site is in the vicinity of two heritage items, being Collins House at 1170 Barrenjoey Road to the east, and Windyridge at 50 and 50B Sunrise Road, to the south-east. This control requires that developments in the vicinity of heritage item(s) are to be designed to respect and complement the heritage significance in terms of the building envelope, proportions, materials, colours and finishes, and building alignment. Council's Heritage Advisor is not supportive of the proposed development with respect to its visual impact on those items. Specifically, Council's Heritage Advisor finds that the proposed works in the road reserve are excessive, and that the works are not sufficiently integrated with landscaping.

These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of this control, nor the following outcome of the control:

- *Development respectful of environmental heritage, undertaken in a manner that is sympathetic to, and does not detract from, any heritage significance.*

This matter is included as a reason for refusal.

B1.4 Aboriginal Heritage Significance

This clause provides that if a property that is the subject of a development application is in the vicinity potential Aboriginal place of heritage significance, additional independent information on the potential heritage significance may be requested, and that development must conserve the significance of any Aboriginal place of heritage significance. The southern half of the subject site is marked as having high

potential for Aboriginal heritage significance.

The development was referred to the Aboriginal Heritage Office, who found that if the sandstone overhang present on the site were be impacted by the proposed development, a preliminary inspection by a qualified Aboriginal heritage professional would be required prior to any further development, in case the rock overhang is of Aboriginal heritage significance. The proposed development includes substantial alteration to the rock overhang, and the application does not provide certainty as to whether the proposed development will have an impact on items of Aboriginal heritage significance. This matter would require resolution prior to issuing development consent. As such, the proposed development is not consistent with the requirements of this control, nor the following outcome of the control:

- *Potential Aboriginal places of heritage significance and Aboriginal objects are identified and protected.*

This matter is included as a reason for refusal.

B4.17 Littoral Rainforest - Endangered Ecological Community

The subject site is predominantly mapped as containing littoral rainforest (endangered ecological community). This control provides that development shall retain, enhance and regenerate areas of Littoral Rainforest and its habitat, shall not result in an onsite loss of canopy cover or a net loss in native canopy trees or Littoral Rainforest, shall retain and enhance habitat and wildlife corridors for locally native species, threatened species and endangered populations, shall ensure any landscaping works are outside areas of existing Littoral Rainforest Endangered Ecological Community, and do not include environmental weeds.

The development application has been assessed by Council's Team Leader of Biodiversity & Planning, who raised concern with respect to the proposed quantum of prescribed (protected) tree removal on the subject site and adjoining road reserve, the quantum of understorey removal, and the removal of five other native trees within the road reserve.

These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of this control, nor the following outcomes of the control:

- *The conservation of littoral rainforest vegetation in Pittwater.*
- *The preservation of littoral rainforest as habitat for fauna.*

This is included as a reason for refusal.

B4.22 Preservation of Trees and Bushland Vegetation

This control provides that:

- Development is to be sited and designed to minimise the impact on remnant native vegetation, including canopy trees and understorey vegetation, and on remnant native ground cover species.

- Where the applicant demonstrates that no reasonable alternative design exists and a tree must be removed, suitable compensatory tree planting is required. Details including proposed species and the location of replacement planting are to be provided.
- Development must also avoid any impact on trees on public land.

The development application was referred to Council's Team Leader of Biodiversity & Planning and Council's Landscape Officer, who raised concern with the quantum of tree removal (including protected trees), understorey removal, and removal of native vegetation both on the subject site and Council's road reserve. Concern was also raised with respect to the impact of the development on its presentation to the street in consideration of the extensive works in Council's road reserve.

These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of this control, nor the following outcomes of the control:

- *To protect and enhance the urban forest of the Northern Beaches.*
- *To protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.*
- *To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long-term.*
- *To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.*

This is included as a reason for refusal.

B5.15 Stormwater

This clause provides that:

- Stormwater runoff must not cause downstream flooding and must have minimal environmental impact on any receiving stormwater infrastructure, watercourse, stream, lagoon, lake and waterway or the like.
- The stormwater drainage systems for all developments are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

The development application was referred to Council's Development Engineer, who raised concern with respect to stormwater management, as detailed in the section of this report relating to referrals.

This matter was communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of this control, nor the following outcomes of the control:

- *Minimise the risk to public health and safety.*
- *Mimic natural stormwater flows by minimising impervious areas, reusing rainwater and stormwater and providing treatment measures that replicate the natural water cycle.*

This is included as a reason for refusal.

B6.2 Internal Driveways

This control provides the requirements for new driveways. Council's Development and Traffic Engineers have reviewed the development application and have found that insufficient information has been provided with regard to the proposed access driveway levels/profile. Further, the basement plan is configured such that it could accommodate two scenarios:

- Parking of two cars and a turning area, which would facilitate vehicular ingress and egress in a forward direction, and would be supported, or
- Parking of four parking spaces, which would prevent vehicular ingress and egress in a forward direction and would not be supported.

These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of this control, nor the following outcomes of the control:

- *Safe and convenient access.*
- *Reduce visual impact of driveways.*
- *Maximise the retention of trees and native vegetation.*

This is included as a reason for refusal.

B6.3 Off-Street Vehicle Parking Requirements

This control provides that two car parking spaces are required for the proposed development. Whilst two parking spaces are shown within the proposed basement garage, Council's Traffic Engineer has found that insufficient information has been provided with regard to the required parking space dimensions and vehicular swept paths, per Australian Standard AS/NZS 2890.1-2004: Parking Facilities - Part 1: Off-Street Car Parking. Further, as detailed throughout this report, concern is raised with respect to the visual impact of the proposed vehicular entry within the public road reserve.

These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of this control, nor the following outcomes of the control:

- *An adequate number of parking and service spaces that meets the demands generated by the development.*
- *Functional parking that minimises...adverse visual or environmental impacts while maximising pedestrian and vehicle safety.*
- *Safe and convenient parking.*

This is included as a reason for refusal.

B6.5 Access Driveways and Works on Road Reserves on or Adjacent to a Main Road

This control provides that applicants will be required to obtain approval under Section 138 of the *Roads Act 1993* for works on the main road (Barrenjoey Road), such as to construct an access driveways and associated structures on the road reserve, as in this case. Council's Development Engineer has reviewed the development application and has found that insufficient information has

been provided with regard to the proposed access driveway, that the proposed roof over the driveway in the road reserve is not supported, and that the proposed width of the pedestrian access stairs is excessive.

These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of this control, nor the following outcomes of the control:

- *Compliance with the requirements of the Environmental Planning and Assessment Act and the Roads Act 1993 (s 138).*
- *Safety.*
- *Pedestrian access and amenity.*
- *Maximise retention of native vegetation and trees.*

This is included as a reason for refusal.

B8.1 Construction and Demolition - Excavation and Landfill

This control provides that excavation of certain depths and within close proximity of property boundaries, and any works that may be affected by geotechnical processes must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater and must be certified by a Geotechnical Engineer.

Whilst the proposed development is supported by a geotechnical investigation prepared by a suitably qualified professional, the proposed development relies on substantial excavation to a maximum of 13.307 metres, for the purpose of:

- Basement garage and turning area, storage, foyer, internal lift and stairs,
- 'Services floor' plant, gym, laundry, toilet, internal lift and stairs, and
- Substantial portions of the ground, first and second floors.

The proposed development also includes excavation of the road reserve along Barrenjoey Road for the purpose of the driveway and a bin storage area, as well as above-ground structures in the road reserve, being retaining walls and the roofed driveway entry. These elements are not supported.

Given the depth and extent of excavation proposed and that the proposed dwelling house also breaches the building height, front building line, and building envelope controls of the Pittwater LEP 2014 and Pittwater 21 DCP (that is, the development is excessive above and below ground), the development is not designed in accordance with the underlying outcomes of this control.

These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of this control, nor the following outcomes of the control:

- *Site disturbance is minimised.*
- *Excavation, landfill and construction not to have an adverse impact.*

This is included as a reason for refusal.

B8.5 Construction and Demolition - Works in the Public Domain

This control provides that all works undertaken within the public road reserve must be protected in a manner to ensure pedestrian and vehicular safety at all times. Council's Development Engineer has reviewed the development application and has found that insufficient information has been provided with regard to the proposed access driveway.

This matter was communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of this control, nor the following outcomes of the control:

- *Protection of Infrastructure.*
- *Ensuring public safety.*
- *Compliance with the Roads Act 1993.*

This is included as a reason for refusal.

B8.6 Construction and Demolition - Traffic Management Plan

The proposed development requires substantial excavation 1,600m³, and would require a Construction Traffic Management Plan (CTMP). This can be managed by application of a condition of consent requiring the CTMP, if the application were to be approved.

C1.1 Landscaping

This control provides that development shall provide for the reasonable retention and protection of existing significant trees, especially near property boundaries, and retention of natural features such as rock outcrops. The development application was referred to Council's Team Leader of Biodiversity & Planning and Council's Landscape Officer, who raised concern with the quantum of tree removal (including protected trees), understorey removal, and removal of native vegetation both on the subject site and Council's road reserve. Concern was also raised with respect to the impact of the development on its presentation to the street in consideration of the extensive works in Council's road reserve.

These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of this control, nor the following outcomes of the control:

- *A built form softened and complemented by landscaping.*
- *Landscaping reflects the scale and form of development.*
- *Retention of canopy trees by encouraging the use of pier and beam footings.*
- *Development results in retention of existing native vegetation.*

This is included as a reason for refusal.

C1.5 Visual Privacy

This control provides that:

- Private open space areas and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation.
- Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

The proposed development is likely to result in unreasonable overlooking to the adjoining sites at 1162 and 1166 Barrenjoey Road, resulting from the first floor front balconies, the second floor front terrace, swimming pool terrace, dining room windows, and the roof terrace, which are set less than 9 metres from their respective side boundaries. It is noted that the elements causing visual privacy impacts are also non-compliant with the front building line, building envelope, and building height controls.

These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of this control, nor the following outcome of the control:

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*

This is included as a reason for refusal.

C1.23 Eaves

This control provides that dwellings shall incorporate eaves minimum 450 millimetres in width on all elevations. The proposed development incorporates a flat roof form with no eaves on any elevation. The underlying outcomes of the control are addressed as follows:

Housing that reflects the coastal heritage and character of Pittwater.

Comment:

The proposed development is surrounded by dwellings of varying architectural types, including a number with flat or skillion roof forms. The proposed roof colours and materials are also suitable in the context of the site.

Optimise roof forms.

Comment:

The proposed flat roof is optimised in that it incorporates solar access and a green roof.

Appropriate solar access and shading is achieved.

Comment:

The proposed flat roof style and BASIX assessment demonstrates adequate thermal performance and will not create unreasonable solar reflection.

The non-compliance with this control does not warrant refusal of the application.

C1.24 Public Road Reserve - Landscaping and Infrastructure

This control provides that:

- Landscaping within the public road reserve is to include street trees planted at 6m centres.

- All existing trees over 3m in height and native vegetation within the road reserve areas are to be retained where practical.
- To ensure a consistent streetscape the new tree plantings are to be the same as the existing adjacent street trees.

The proposed development includes removal of several street trees greater than 3 metres in height, to construct the planted roof structure over the proposed driveway within Council's road reserve. The proposed treatment of the road reserve is not in keeping with the existing and desired streetscape, results in privatisation of the public road reserve, and is not supported by Council's Development Engineer for the reasons detailed in the section of this report relating to referrals.

These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of this control, nor the following outcomes of the control:

- *Desirable character of the Pittwater streetscape.*
- *Consistency in the design and construction of landscape works in the road reserve.*

This is included as a reason for refusal.

D12.1 Character as viewed from a public place

This control provides that:

- Buildings that front the street must have a street presence and incorporate design elements that are compatible with any design themes for the locality.
- The bulk and scale of buildings must be minimised.
- Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place. Parking structures should be located behind the front building line.
- 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.

The proposed development includes a roofed driveway entry, wide pedestrian access stairs and retaining walls within Council's road reserve, of a size and scale that is not in keeping with the existing and desired character of the locality. The proposed dwelling house is not compliant with the height of buildings development standard of the PLEP 2014, nor the front building line and building envelope controls of the P21 DCP, indicating excessive bulk and scale. The proposed development also relies on unreasonable tree removal (including prescribed/protected and native species).

These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of this control, nor the following outcomes of the control:

- *To achieve the desired future character of the Locality.*
- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment.*

- *To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.*
- *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.*
- *Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum.*
- *To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.*
- *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.*

This is included as a reason for refusal.

D12.5 Front building line

This control requires a minimum 10-metre setback to the front boundary fronting Barrenjoey Road. The proposed development includes entry stairs immediately at the front boundary, dwelling stairs 4.1 metres from the boundary, and the dwelling itself 4.9 metres from the front boundary. The proposed development also includes works within Council's road reserve, for the purpose of a planted roof form over the driveway, retaining walls, and wide pedestrian access stairs. It is noted that variations are built into the control to allow for lesser setbacks in certain circumstances. The proposed development does not meet the prerequisites for consideration of lesser setbacks, given it relies on excessive excavation, excessive tree removal, and non-compliant built form.

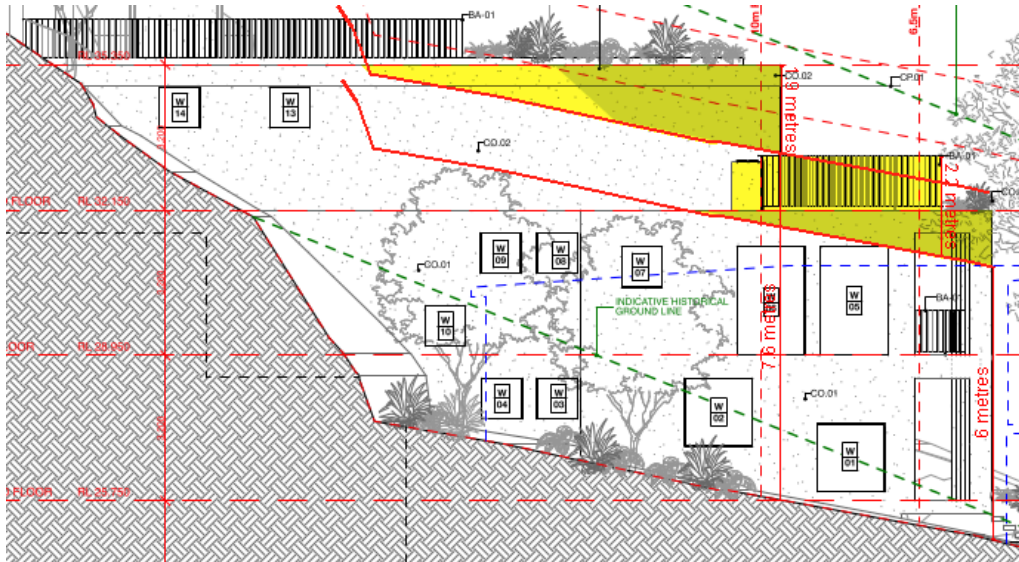
These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of this control, nor the following outcomes of the control:

- *Achieve the desired future character of the Locality.*
- *The amenity of residential development adjoining a main road is maintained.*
- *Vegetation is retained and enhanced to visually reduce the built form.*
- *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.*
- *To encourage attractive street frontages and improve pedestrian amenity.*
- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*

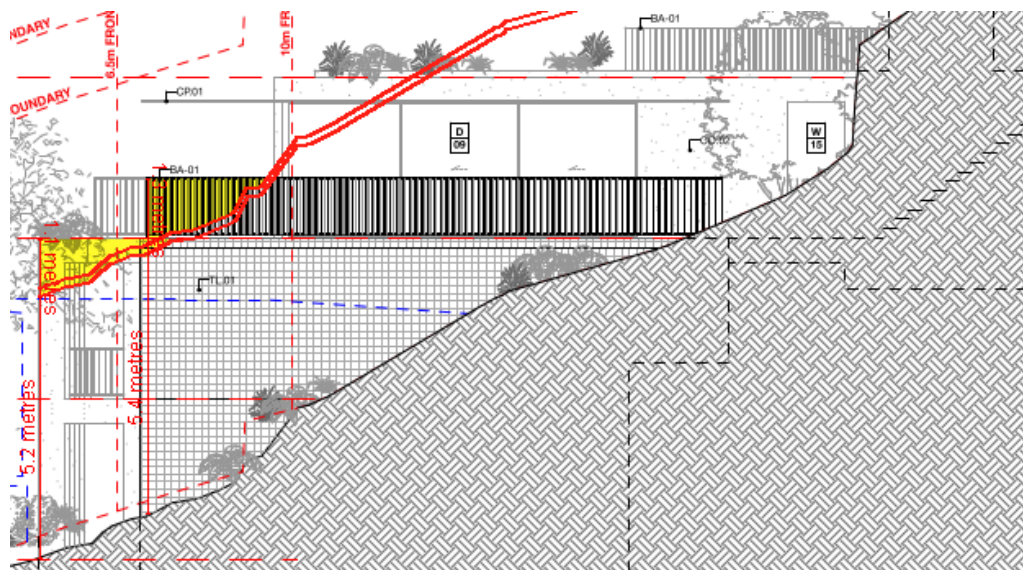
This is included as a reason for refusal.

D12.8 Building envelope

This control provides a building envelope projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height applies to the site. The proposed development includes substantial breaches to the building envelope at both the eastern and western side elevations, shown below:



Above: The portions of the development that breach the building envelope on the eastern elevation, shown in yellow.



Above: The portions of the development that breach the building envelope on the western elevation, shown in yellow.

It is noted that a variation is built into the control to allow for building envelope breaches to be considered on a merits basis, where the building footprint is situated on a slope over 16.7 degrees (30%). The proposed development is situated on a slope of approximately 28-30 degrees (53-57%), being steep topography. However, the breaching portions are not acceptable on merit, given they result in excessive built form and unreasonable visual privacy impacts, and rely on excessive excavation and tree removal.

These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of

this control, nor the following outcomes of the control:

- *To achieve the desired future character of the Locality.*
- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*
- *To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*
- *The bulk and scale of the built form is minimised.*
- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties.*
- *Vegetation is retained and enhanced to visually reduce the built form.*

This is included as a reason for refusal.

D12.13 Construction, Retaining walls, terracing and undercroft areas

This control provides that:

- Lightweight construction and pier and beam footings should be used in environmentally sensitive areas, such as this site being in a conservation zone.
- Where retaining walls (for vehicular access) have been erected on the eastern side of Barrenjoey Road...the area between the wall and the road shall be suitably landscaped to help screen it from view without limiting sight lines to the street.

The proposed development includes two retaining walls in the public road reserve to support construction of the new driveway entry and pedestrian access stairs. The proposed development is not of lightweight construction and creates substantial built elements within Council's roadway that are not suitably screened with vegetation to reduce their visual impact. Further, screening of the northern-most retaining wall is unlikely to be supported given vegetation north of this wall may impact upon sight lines of cars along Barrenjoey Road and cars exiting/entering the subject site, as well as 1162 and 1166 Barrenjoey Road.

These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of this control, nor the following outcomes of the control:

- *To achieve the desired future character of the Locality.*
- *To protect and minimise disturbance to natural landforms.*
- *To encourage building design to respond sensitively to natural topography.*

This is included as a reason for refusal.

D12.14 Scenic Protection Category One Areas

This control provides that:

- Development is to minimise the impact on existing significant vegetation.

- The applicant shall demonstrate the retention and regeneration of existing native vegetation outside of the immediate area required to carry out the development.
- The siting, building form, orientation and scale of the development shall not compromise the visual integrity of the site by removal of canopy trees along ridges and upper slopes.

The proposed development includes substantial tree removal, including prescribed/protected and native trees on the subject site and within the road reserve. The extent of tree removal is not supported in consideration of the unreasonable built form and its resultant non-compliance with applicable controls, and in consideration of the unnecessary and extensive works in the road works.

These matters were communicated to the Applicant on 19 February 2025. No amendments were made to the development application. As such, the proposed development is not consistent with the requirements of this control, nor the following outcomes of the control:

- *To achieve the desired future character of the Locality.*
- *Maintenance and enhancement of the tree canopy.*
- *To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component.*
- *To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.*
- *To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.*
- *Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.*

This is included as a reason for refusal.

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 \$48,323 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,832,317.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

The Applicant has not submitted a written request to vary the development standard set out by Clause 4.3 Height of Buildings of the Pittwater Local Environmental Plan 2014. As such, Council is not satisfied with respect to the matters under Clause 4.6 Exceptions to Development Standards of the Pittwater Local Environmental Plan 2014.

With respect to Clause 4.6(3), the Applicant has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and has not demonstrated that there are sufficient environmental planning grounds to justify the variation.

This is included as a reason for refusal.

PLANNING CONCLUSION

This development application seeks consent for demolition of the existing single-storey detached dwelling house, and construction of a five-storey dwelling house with swimming pool, and works within the road reserve.

The application has been referred to the Development Determination Panel (DDP) due to a 10.59% variation to the development standard set out in Clause 4.3 Height of Buildings of the Pittwater Local Environmental Plan 2014.

As a result of the public notification of the application, submissions from one property (50A Sunrise Road) were received. Concerns raised in the submissions predominantly relate to the proposed bulk and scale, inconsistency with the character of the zone and locality, amenity impacts, tree removal, geotechnical hazards, and construction impacts.

Within this report, detailed assessment was given to a number of matters, and ultimately results in a recommendation for refusal. The proposed development is not compliant with the building height, front

building line, building envelope and retaining walls controls of the Pittwater LEP 2014 and Pittwater 21 DCP. The proposed development results in excessive bulk and scale, excessive excavation (on the subject site and public road reserve) and excessive tree and understorey removal (on the subject site and public road reserve).

The proposed development includes works within the public road reserve, including pedestrian access stairs, bin storage area, landscaped roof over the driveway, and multiple retaining walls. These matters are not supported with respect to their bulk and scale, and their reliance on excessive excavation and tree removal. The works are also of a type and scale that creates unreasonable and unacceptable privatisation of public land.

The proposal has been recommended for **refusal**.

REASON FOR DETERMINATION

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2024/1619 for the Demolition works and construction of a dwelling house including swimming pool on land at Lot 1 DP 398353,1164 Barrenjoey Road, PALM BEACH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
2. Pursuant to Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, and with respect to the existing and desired future character of the zone and locality, the proposed development is inconsistent with the provisions of:
 - Zone E4 Environmental Living of the Pittwater Local Environmental Plan 2014
 - A4.12 Palm Beach Locality of the Pittwater 21 Development Control Plan
 - D12.14 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan
 - D12.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan

Particulars:

- a) The proposed development is of excessive bulk and scale, and results in excessive excavation (on the subject site and public road reserve) and excessive tree and understorey removal (on the subject site and public road reserve), including prescribed/protected trees within the Littoral Rainforest Endangered Ecological Community, and native trees.
- b) The proposed development is inconsistent with the objectives of the C4 Environmental Living zone in that it is not low-impact and has adverse impacts on the special ecological and aesthetic values of the land, given the above at (a).
- c) The proposed development is inconsistent with the desired future character of the Palm Beach Locality for the reasons above at (a).

- d) The proposed development is inconsistent with the scenic protection area for the reasons above at (a).
 - e) The proposed development is inconsistent with the character of the area as viewed from Barrenjoey Road for the reasons above at (a).
3. Pursuant to Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, and with respect to the built form, the proposed development is inconsistent with the provisions of:
- Clause 4.3 Height of buildings of the Pittwater Local Environmental Plan 2014
 - Clause 4.6 Exceptions to development standards of the Pittwater Local Environmental Plan 2014
 - D12.5 Front building line of the Pittwater 21 Development Control Plan
 - D12.8 Building envelope of the Pittwater 21 Development Control Plan
 - D12.13 Construction, Retaining walls, terracing and undercroft areas of the Pittwater 21 Development Control Plan

Particulars:

- a) The proposed development results in non-compliance with the applicable building height, front building line, building envelope and retaining walls controls of the Pittwater LEP 2014 and Pittwater 21 DCP.
 - b) The proposed development is inconsistent with the objectives of those controls due to excessive bulk and scale, resultant visual bulk and privacy impacts, and inconsistency with the zone and character of the locality.
 - c) Development consent must not be granted, with respect to Clause 4.6 (3) of the Pittwater LEP 2014.
 - d) Development consent must not be granted, with respect to Clause 4.3 (2D) of the Pittwater LEP 2014.
4. Pursuant to Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, and with respect to heritage significance (including Aboriginal heritage), the proposed development is inconsistent with the provisions of:
- Clause 5.10 Heritage conservation of the Pittwater Local Environmental Plan 2014
 - B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites of the Pittwater 21 Development Control Plan
 - B1.4 Aboriginal Heritage Significance of the Pittwater 21 Development Control Plan.

Particulars:

- a) The proposed development is in the vicinity of two heritage items, namely Collins House at 1170 Barrenjoey Road and Windyridge at 50 and 50B Sunrise Road.
- b) The proposed development results in unacceptable visual impact on those items, with respect to the excessive structures in the road reserve, and that the proposed development is not sufficiently integrated with landscaping.
- c) The subject site contains a sandstone rock outcrop that requires substantial modification in order to accommodate the proposed development, but the development application does not

provide certainty as to whether the proposed development will have an impact on items of Aboriginal heritage significance with respect to that rock outcrop.

5. Pursuant to Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, and with respect to environmental impacts, the proposed development is inconsistent with the provisions of:
 - Clause 7.2 Earthworks of the Pittwater Local Environmental Plan 2014
 - Clause 7.6 Biodiversity protection of the Pittwater Local Environmental Plan 2014
 - Clause 7.7 Geotechnical hazards of the Pittwater Local Environmental Plan 2014
 - B4.17 Littoral Rainforest - Endangered Ecological Community of the Pittwater 21 Development Control Plan
 - B4.22 Preservation of Trees and Bushland Vegetation of the Pittwater 21 Development Control Plan
 - B8.1 Construction and Demolition - Excavation and Landfill of the Pittwater 21 Development Control Plan

Particulars:

- a) The proposed development will result in unacceptable earthworks, with respect to:
 - The effect of the proposed development on the amenity of adjoining properties,
 - The likelihood of disturbing relics, specifically regarding Aboriginal heritage significance,
 - The proximity to, and potential for adverse impacts on, an environmentally sensitive area, and
 - The proximity to, and potential for adverse impacts on, the two nearby two heritage items.
 - b) The proposed development relies on excessive excavation that does not minimise site disturbance and does result in adverse impact with respect to tree removal and visual bulk.
 - c) The proposed development relies on excessive tree and understorey removal on the subject site and public road reserve, including prescribed/protected trees within the Littoral Rainforest Endangered Ecological Community, and native trees.
 - d) The proposed development is not supported by sufficient information to demonstrate safe vehicular access along Barrenjoey Road, nor safe stormwater and drainage management measures, with respect to geotechnical hazards.
 - e) Development consent must not be granted, with respect to Clauses 7.6 (4) and 7.7 (4) of the Pittwater LEP 2014.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, and with respect to works within the road reserve, the proposed development is inconsistent with the provisions of:
 - B6.5 Access Driveways and Works on Road Reserves on or Adjacent to a Main Road of the Pittwater 21 Development Control Plan
 - B8.5 Construction and Demolition - Works in the Public Domain of the Pittwater 21 Development Control Plan
 - C1.1 Landscaping of the Pittwater 21 Development Control Plan
 - C1.24 Public Road Reserve - Landscaping and Infrastructure of the Pittwater 21 Development Control Plan

Particulars:

- a) The proposed development includes works in the road reserve, including:
 - Pedestrian access stairs,
 - Bin storage area,
 - Landscaped roof over the driveway, and
 - Retaining walls.
 - b) The works within the road reserve are excessive in bulk and scale, rely on excessive excavation, and are insufficiently integrated with the landform and landscaping.
 - c) The proposed driveway is not supported by sufficient information to demonstrate pedestrian and vehicular safety along Barrenjoey Road.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, and with respect to amenity impacts, the proposed development is inconsistent with the provisions of Clause C1.5 Visual Privacy of the Pittwater 21 Development Control Plan.

Particulars:

- a) The proposed development results in unreasonable visual privacy impacts to 1162 and 1166 Barrenjoey Road, resulting from the first floor front balconies, the second floor front terrace, swimming pool terrace, dining room windows, and the roof terrace.
 - b) The elements causing visual privacy impacts are also not compliant with the applicable building height, front building line, building envelope.
8. Pursuant to Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, and with respect to necessary infrastructure and services, the proposed development is inconsistent with the provisions of:
- Clause 7.10 Essential services of the Pittwater Local Environmental Plan 2014
 - B5.15 Stormwater of the Pittwater 21 Development Control Plan
 - B6.2 Internal Driveways of the Pittwater 21 Development Control Plan
 - B6.3 Off-Street Vehicle Parking Requirements of the Pittwater 21 Development Control Plan

Particulars:

- a) The proposed driveway is not supported by sufficient information to demonstrate pedestrian and vehicular safety along Barrenjoey Road, with specific reference to:
 - Driveway levels/profile,
 - Vehicular turning paths, and
 - Car parking space dimensions.
- b) The proposed development is not supported by sufficient information to demonstrate compliant stormwater management measures.
- c) Development consent must not be granted, with respect to Clause 7.10 of the Pittwater LEP 2014.

9. 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:

- a) The proposed structures in the road reserve that are of a type and scale that creates unreasonable and unacceptable privatisation of public land.
- b) The proposed development is contrary to the relevant requirements of the PLEP 2014 and P21 DCP as detailed above, will result in a development that would create an undesirable precedent, would undermine the desired future character of the area, and would be contrary to the expectations of the community.



EAST ELEVATION

A3 @1:100

MATERIALS SCHEDULE

ID	DESCRIPTION
D	DOOR - DARK METAL FINISH
W	WINDOW - DARK METAL FINISH
CO.01	CONCRETE - EARTHY BROWN TONE
CO.02	CONCRETE - DARK GREEN TONE
CP.01	COPPER SHEET ROOF
BA.01	METAL BALUSTRADE
TL.01	DARK TILE CLADDING
ST.01	NATURAL STONE PAVING
TL.01	TIMBER CLAD DOOR
GL.01	TINTED GLASS BRICK

Certificate No. 0011560901

Scan QR code or follow website link for rating details.

Assessor name: Scott Douglas
Accreditation No. 13/1547
Property Address: 1184 Barrenjoey Rd, Palm Beach NSW 2108
www.sco.co.nz/2020/assessor/13/1547/44/Copy

Annotations:

- 1184 BARRENJOEY RD, PALM BEACH BEYOND
- EXTENT OF WALL ENCROACHMENT ON BUILDING ENVELOPE SHOWN BLUE
- INDICATIVE HISTORICAL HEIGHT LINE (8.5M) AT BUILDING LINE
- 10m FRONT SETBACK
- 6.5m FRONT SETBACK
- FRONT BOUNDARY
- 10m HEIGHT LINE AT BOUNDARY
- 6.5m HEIGHT LINE AT BOUNDARY
- LINE OF BUILDING BEYOND

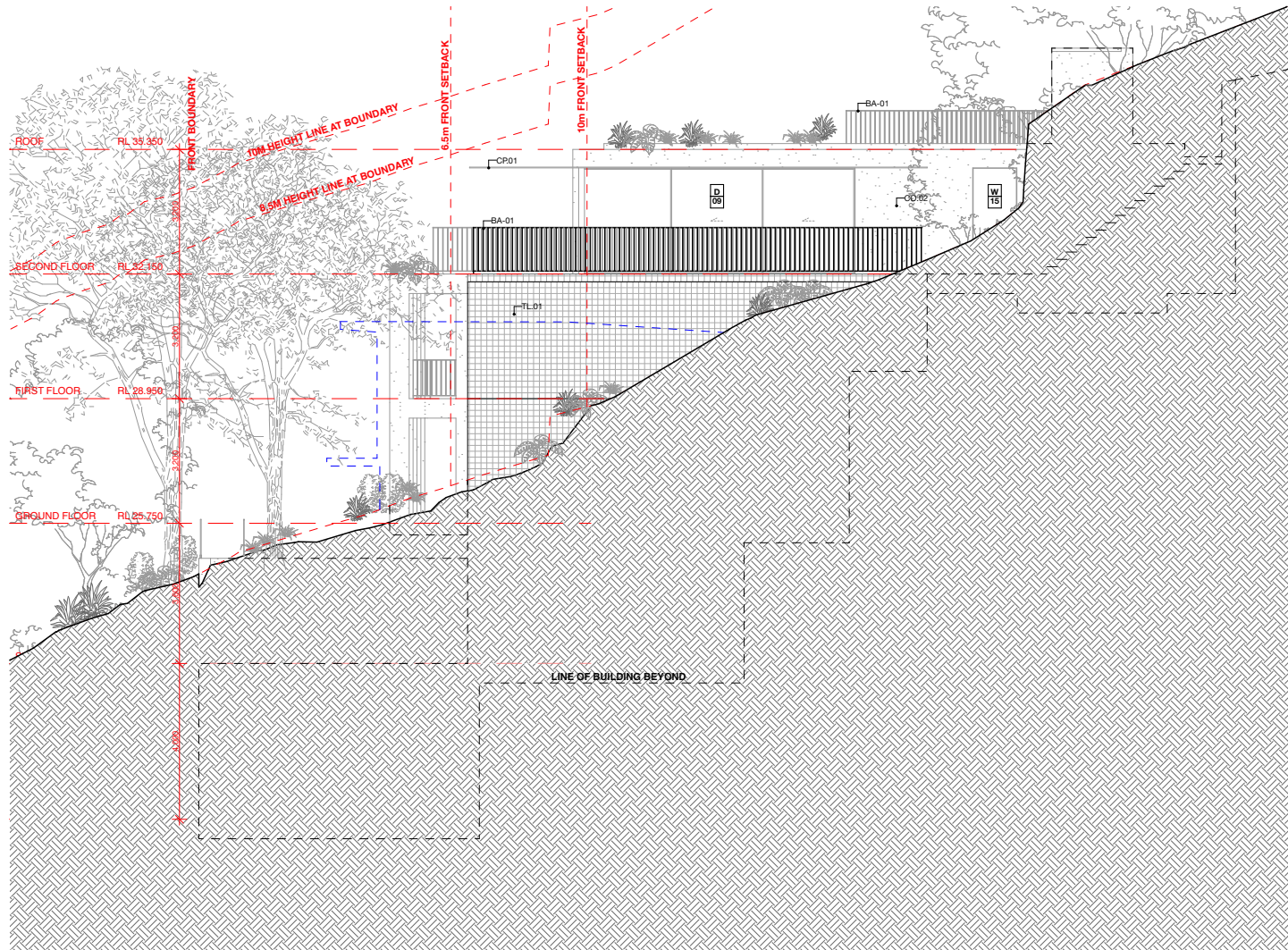
Floor Levels:

- ROOF: RL 38.244
- SECOND FLOOR: RL 35.196
- FIRST FLOOR: RL 33.259
- GROUND FLOOR: RL 29.758
- SERVICES FLOOR: RL 22.158
- BASEMENT FLOOR: RL 18.150

Window and Door Labels:

- W 14, W 13, W 09, W 08, W 07, W 06, W 05, W 10, W 04, W 03, W 02, W 01
- CO.01, CO.02, CP.01, BA.01, GL.01

53

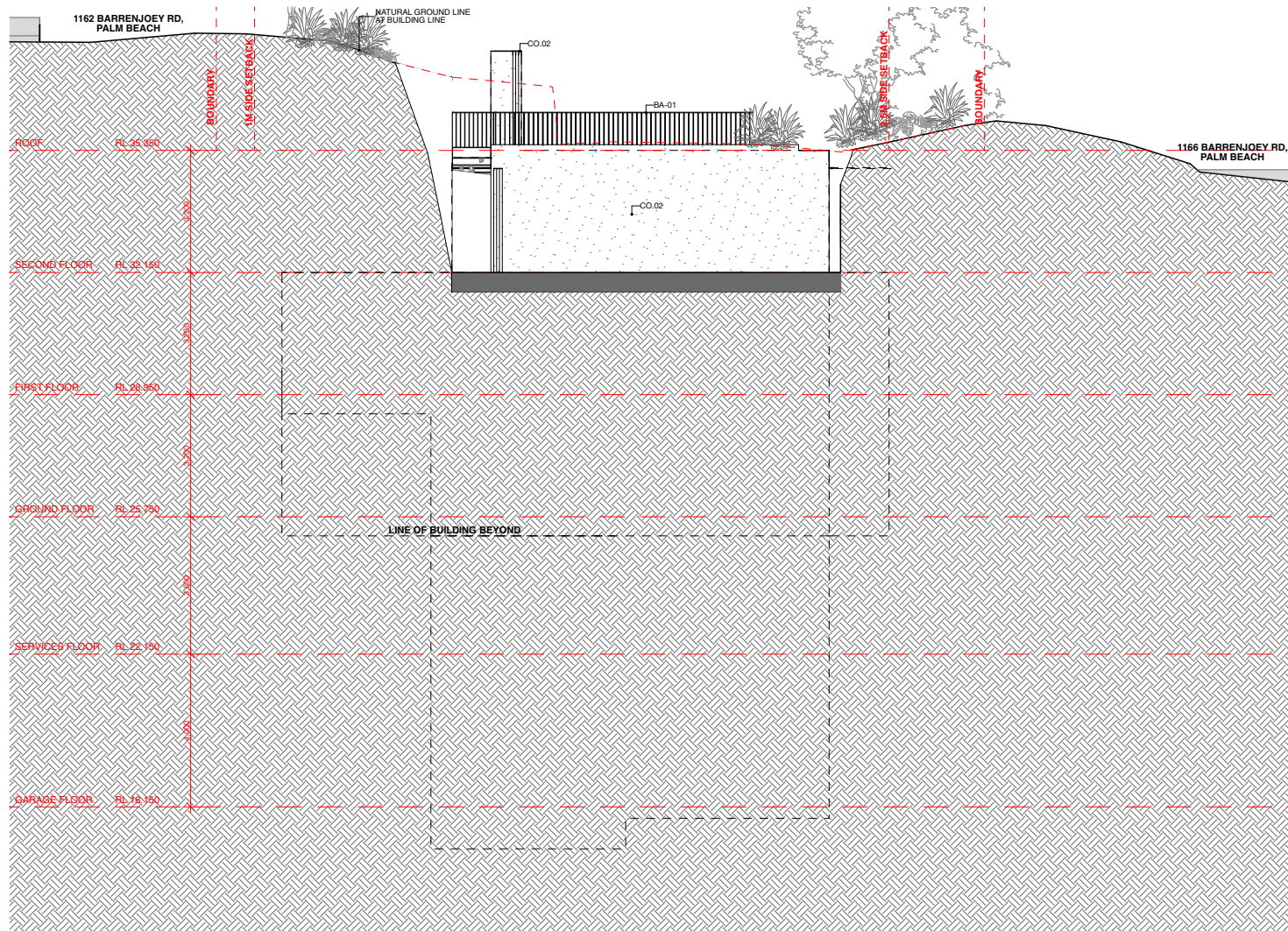


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MATERIALS SCHEDULE	
ID	DESCRIPTION
D	DOOR - DARK METAL FINISH
W	WINDOW - DARK METAL FINISH
CO.01	CONCRETE - EARTHY BROWN TONE
CO.02	CONCRETE - DARK GREEN TONE
CP.01	COPPER SHEET ROOF
BA.01	METAL BALUSTRADE
TL.01	DARK TILE CLADDING
ST.01	NATURAL STONE PAVING
TL.01	TIMBER CLAD DOOR
GL.01	TINTED GLASS BRICK

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ATTACHMENT 2 : SITE PLAN AND ELEVATIONS - ITEM 3.1 - DEVELOPMENT DETERMINATION PANEL - 30 APRIL 2025





Certificate No. 0011560901

Scan QR code or follow website link for rating details.

Assessor name Scott Douglass

Accreditation No. 13/1547

Property Address 1164 Barrenjoey
Road, PALM BEACH
NSW, 2108



<https://www.australiaproperty.com.au/QR/Generate/?p=YPL&FCpco>

MATERIALS SCHEDULE	
ID	DESCRIPTION
D	DOOR - DARK METAL FINISH
W	WINDOW - DARK METAL FINISH
CO.01	CONCRETE - EARTHY BROWN TONE
CO.02	CONCRETE - DARK GREEN TONE
CP.01	COPPER SHEET ROOF
BA.01	METAL BALUSTRADE
TL.01	DARK TILE CLADDING
ST.01	NATURAL STONE PAVING
TL.01	TIMBER CLAD DOOR
GL. 01	TINTED GLASS BRICK

SOUTH ELEVATION

A3 @1:100

KEY:

-  DENOTES EXISTING STRUCTURE TO BE RETAINED
 DENOTES PROPOSED NEW STRUCTURE
 DENOTES AREA OF SOFT LANDSCAPING
 DENOTES AREA OF SWIMMING POOL
 DENOTES EXISTING STRUCTURE TO BE DEMOLISHED

PROJECT:
NEW RESIDENTIAL DWELLING

CLIENT:
JOHNSON & THOMSON

LOCATION:
1164 BARRENJOEY ROAD,
PALM BEACH, NSW

PROJECT STAGE:
DEVELOPMENT APPLICATION

DRAWING TITLE:
ELEVATIONS: SHEET 03

SCALE:
1:100 @ A3

DATE OF ISSUE:
5/11/24

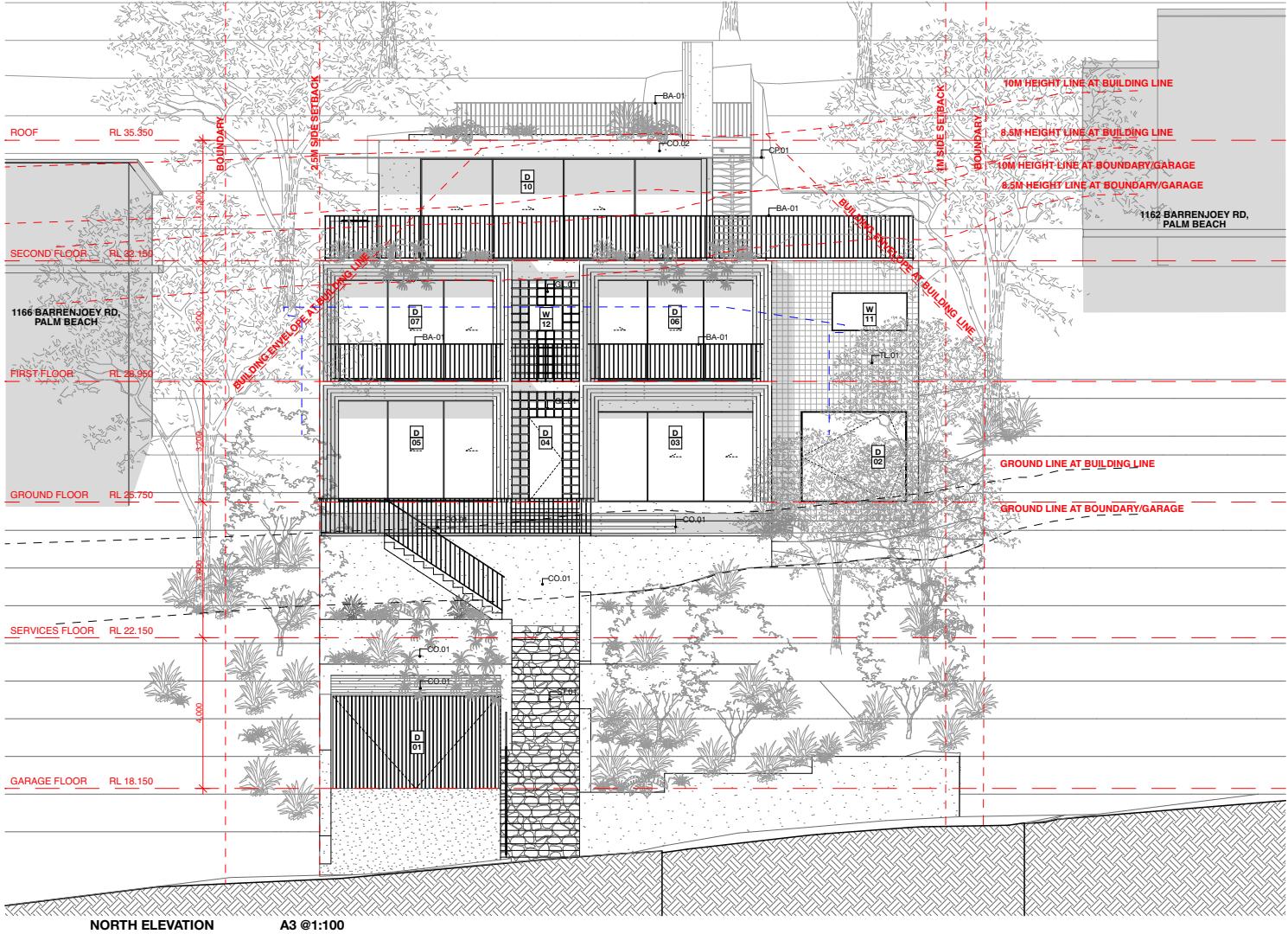
DRAWING NO.
DA-302

REVISION:
01

r a m a

nominated architect
 Thomas Martin
 nra reg. #10383
 8 / 30 AVALON PARADE,
 AVALON BEACH, NEBB 2157
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ATTACHMENT 2 : SITE PLAN AND ELEVATIONS - ITEM 3.1 - DEVELOPMENT DETERMINATION PANEL - 30 APRIL 2025



ID	DESCRIPTION
D	DOOR - DARK METAL FINISH
W	WINDOW - DARK METAL FINISH
CO.01	CONCRETE - EARTHY BROWN TONE
CO.02	CONCRETE - DARK GREEN TONE
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TL.01	DARK TILE CLADDING
ST.01	NATURAL STONE PAVING
TL.01	TIMBER CLAD DOOR
GL.01	TINTED GLASS BRICK

NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION, FOR DA APPROVAL ONLY. NOTE: DO NOT SCALE OFF THIS DRAWING. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE N.C.C. 2020. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE BASIX REQUIREMENTS. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH CONSULTANTS REQUIREMENTS.	KEY: DENOTES EXISTING STRUCTURE TO BE RETAINED DENOTES PROPOSED NEW STRUCTURE DENOTES AREA OF SOFT LANDSCAPING DENOTES AREA OF SWIMMING POOL DENOTES EXISTING STRUCTURE TO BE DEMOLISHED	PROJECT: NEW RESIDENTIAL DWELLING	PROJECT STAGE: DEVELOPMENT APPLICATION	DATE OF ISSUE: 5/11/24	rama REGISTERED ARCHITECT Sydney, NSW From May 2018 A/178/2018/2019/2020/2021/2022/2023/2024 www.ramadesign.com.au ANM 8117 710 635 COPYRIGHT © RAMA ARCHITECTS PTY LTD. THIS DRAWING IS NOT TO BE USED OR REPRODUCED IN ANY FORM WITHOUT THE WRITTEN AUTHORITY OF RAMA ARCHITECTS
		CLIENT: JOHNSON & THOMSON	DRAWING TITLE: ELEVATIONS: SHEET 04	DRAWING NO. DA-303	
		LOCATION: 1164 BARRENJOEY ROAD, PALM BEACH, NSW	SCALE: 1:100 @ A3	REVISION: 01	

ITEM 3.2	DA2024/1383 - 20 SUNRISE ROAD PALM BEACH - CONSTRUCTION OF A SECONDARY 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 building height standard.

RECOMMENDATION

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2024/1383 for construction of a secondary dwelling on land at Lot 140 DP 11552, 20 Sunrise Road PALM BEACH, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2025/253912
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - HOB

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1383
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Responsible Officer:	Anais Sarkissian
Land to be developed (Address):	Lot 140 DP 11552, 20 Sunrise Road PALM BEACH NSW 2108
Proposed Development:	Construction of a secondary dwelling
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	John Daubney

Application Lodged:	17/10/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	25/10/2024 to 08/11/2024
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 40%
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,144,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for the construction of a secondary dwelling.

The application is referred to the Development Determination Panel (DDP) due to the proposed secondary dwelling resulting in a variation of more than 10% to Clause 4.3 Height of Buildings of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

The maximum permitted building height for a secondary dwelling in zone C4 Environmental Living that is separate from the principal dwelling is 5.5m, pursuant to Clause 4.3(2FA) of the PLEP 2014. The proposed building height is 7.7m, representing a variation of 40%. This variation is supported by a written Clause 4.6 variation request, which demonstrates that strict compliance with the height of buildings development standard is unreasonable and unnecessary. The variation to building height

arises from the naturally steep topography of the land and the pier and beam construction proposed minimises excavation, site disturbance and impacts to existing rock outcrops on the site.

The proposal includes variations to the built form controls under the Pittwater 21 Development Control Plan (P21DCP), these being the northern side building line under D12.6 Side and rear building line and the building envelope at the southern elevation under D12.8 Building envelope. The proposal, in regard to these variations, does not result in unacceptable environmental and/or amenity impacts, with the development achieving the relevant objectives.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. Two submissions were received. Concerns raised in the objections predominantly relate to carparking, building height and protection of the existing landscape.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that on balance 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 grant approval the development application, subject to recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

This development application is for the construction of a one-bedroom secondary dwelling with pedestrian access via the existing external stairs off Ocean Road. The proposal does not involve the removal of any prescribed trees. No changes are proposed to the existing principal dwelling house.

Note - the original design included an inclinor connecting Ocean Road to the secondary dwelling; however, amended plans submitted on 20 March 2025 deleted the inclinor from the proposed scope of 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

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
 Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
 Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
 Pittwater Local Environmental Plan 2014 - 7.5 Coastal risk planning
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
 Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
 Pittwater 21 Development Control Plan - C1.23 Eaves
 Pittwater 21 Development Control Plan - D12.1 Character as viewed from a public place
 Pittwater 21 Development Control Plan - D12.6 Side and rear building line
 Pittwater 21 Development Control Plan - D12.8 Building envelope

SITE DESCRIPTION

Property Description:	Lot 140 DP 11552 , 20 Sunrise Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Sunrise Road. The site is regular in shape with a primary frontage of 19.8m along Sunrise Road and a secondary frontage of 19.5m to Ocean Road. The site has a depth of 56.4m along its northern boundary and 52.5m along its southern boundary. The site has a surveyed area of 1,060m². The site is located within the C4 Environmental Living zone and accommodates a multi-storey dwelling house with attached double garage and above ground swimming pool. Vehicular access to the site is via Sunrise Road, with steep access stairs provided off Ocean Road. The site is steeply sloping from the west down towards the east, with the gradient of the slope also increasing towards the east. The site contains very dense vegetation including large canopy trees and shrubs, as well as significant rock outcrops mostly in the centre of the site for the width of the property. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by multi-storey dwelling houses. The two properties to the north and two properties to the south of the site have dual frontages to both Sunrise Road and Ocean Road, with vehicular access off Sunrise Road and dense vegetation towards Ocean Road. The dwellings further north and south

of the site have primary frontage to Ocean Road, where vehicular access is facilitated.

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:

N0580/99

Development Application for additions to an existing deck.
Approved 27 January 2000

N0282/14

Development Application for swimming pool and spa with associated pool and side deck and access stairs to residence.
Approved 19 September 2014

N0282/14/S96/1

Modification of Development Consent N0282/14 for swimming pool and spa with associated pool and side deck and access stairs to residence.
Approved 14 August 2015

CC0323/15

Construction Certificate (2015/5534) issued for swimming pool and spa with associated pool and side deck and access stairs to residence.
Approved 8 October 2015

N0282/14/S96/2

Modification of Development Consent N0282/14 for swimming pool and spa with associated pool and side deck and access stairs to residence.
Approved 10 November 2016

DA2018/0169

Tree Application for removal of one Banksia integrifolia tree.
Approved 13 February 2018

DA2021/0298

Development Application for alterations and additions to a dwelling house.
Approved 23 April 2021

CC2021/0719

Construction Certificate (210150/01) issued for alterations and additions to a dwelling house.
Approved 22 June 2021

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested on 21 January 2025 in relation to on-site detention, site access and inclinometer, and building height and envelope. <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

Section 4.15 Matters for Consideration	Comments
	authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 25/10/2024 to 08/11/2024 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 2 submission/s from:

Name:	Address:
Ms Shirley Jean Walsh	18 Sunrise Road PALM BEACH NSW 2108
The Palm Beach & Whale Beach Association Inc	PO Box 2 PALM BEACH NSW 2108

The issues raised within the submissions are summarised and addressed as follows:

- **Protection of existing landscape**

The submissions sought to mitigate impacts of the development and that the proposal minimises the loss of habitat formed by the existing canopy trees, native vegetation and rock outcrops.

Comment:

The proposed secondary dwelling has been designed and sited to minimise site disturbance as the pier and post construction avoids the need for excessive excavation. The proposed development does not require the removal of any prescribed canopy trees or significant vegetation and has been sited such that the existing rock outcrops on the land are retained. The proposal has been supported by Council's Landscape and Biodiversity Officers, subject to conditions, including the protection of habitat features and a pre-clearance survey of any habitat for native wildlife prior to its removal.

- **Setbacks**

The submissions raised concerns that the development will encroach into the required setback from the common boundary with 18 Sunrise Road and inadvertently impact that property during excavation and building works. It was requested that Council include a condition within the consent to require the owner of 20 Sunrise Road to mark the common boundary of 18 and 20 Sunrise Road from the Ocean Road boundary to the rock outcrop above the proposed works by a survey precisely identifying the boundary and placing star stakes at 10m intervals on that boundary until the completion of the development. It was also requested that a condition be included to require an 1800mm high builder's mesh fence to be installed along the same portion of the common boundary until completion of the development.

Comment:

The proposed dwelling sits 1.2m from the southern common boundary, complying with the minimum side setback of 1m. A condition has been included within the recommendations of this report to require the side boundaries of the site to be marked with stakes at 10m intervals and connected with string to ensure the works are located wholly within the subject site. This in conjunction with survey verification during construction should ensure that the impacts of the development are mitigated.

- **Car Parking**

The submissions raised concerns over the lack of car parking provided, and that an additional off-street parking space is required for the additional dwelling proposed. It was suggested that the application be amended to provide a parking space within the property on the Ocean Road frontage.

Comment:

While the proposal is technically non-compliant with the off-street parking requirements of the Pittwater 21 DCP, clause 53(2)(b) of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) stipulates the following non-discretionary development standard in relation to secondary dwellings:

"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."

The proposal satisfies the requirements of the Housing SEPP, which prevails over the DCP, thereby preventing Council from requiring more onerous parking rates.

Off-street car parking is assessed under Section B6.3 of this report. The creation of a parking space within the property off Ocean Road, as suggested by the submission, would require significant excavation and site disturbance.

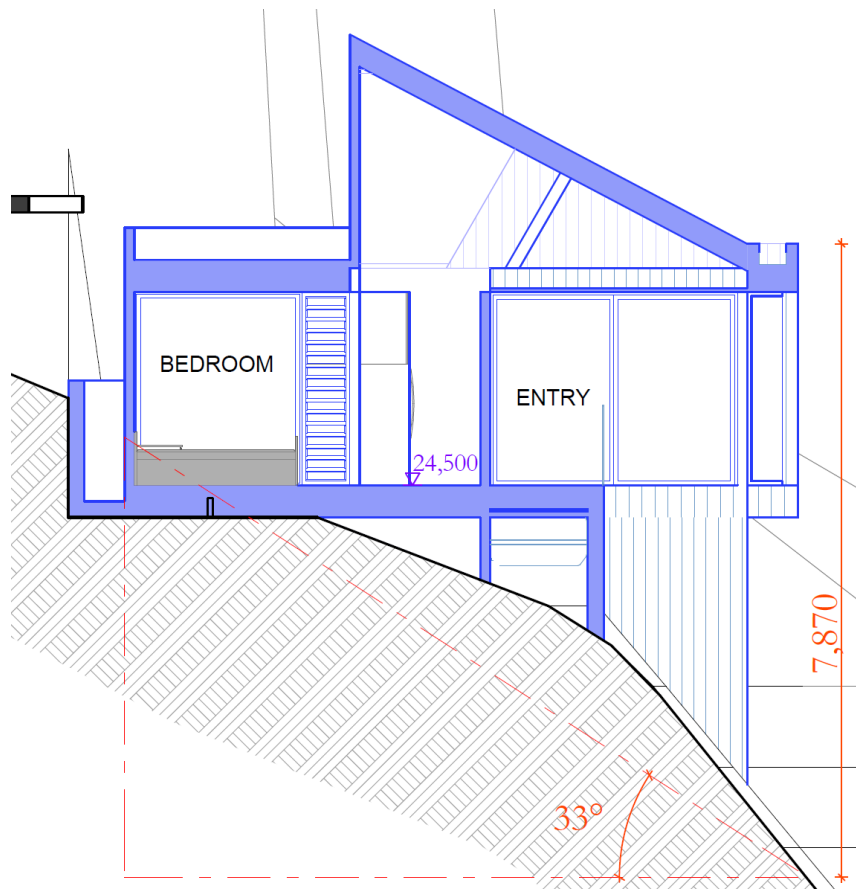
- ***Building Height***

The submissions raised concerns over the extent of height breach associated with the unusual roof shaped like a wing.

Comment:

The variation in the height of the secondary dwelling is due to the steep sloping topography of the site and the use of pier and post construction to minimise site disturbance. The section plan extract below at Figure 1 demonstrates that the highest point of the building is actually where the roof is flat. The height variation is assessed in detail under Section 4.6 of this report.

Figure 1: Section Plan



- **Undercroft Area**

The submissions raised concerns that there is significant space underneath the floor of the dwelling, and that the use of that space must therefore be conditioned as non-habitable space.

Comment:

Amended plans submitted on 20 March 2025 lower the dwelling such that the extent of undercroft area is reduced (refer Figures 2 and 3). It is not considered necessary to condition this space as non-habitable.

Figure 2: Original Design

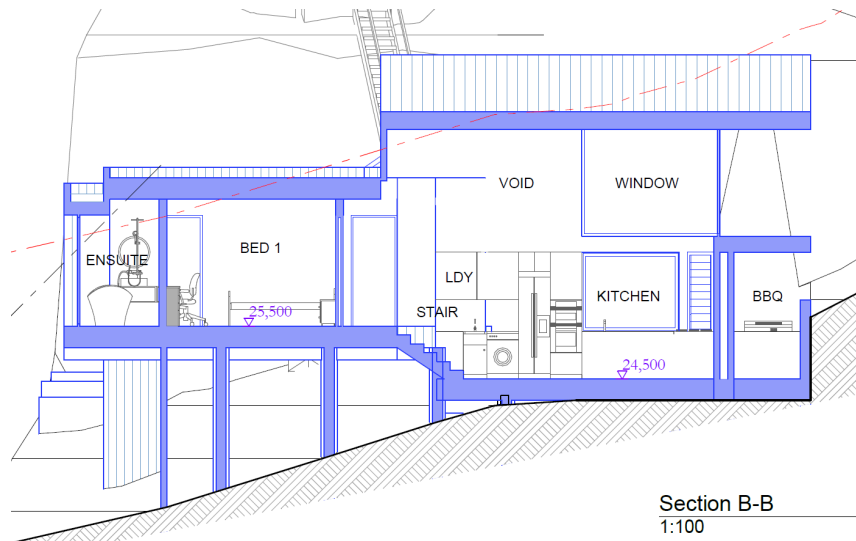
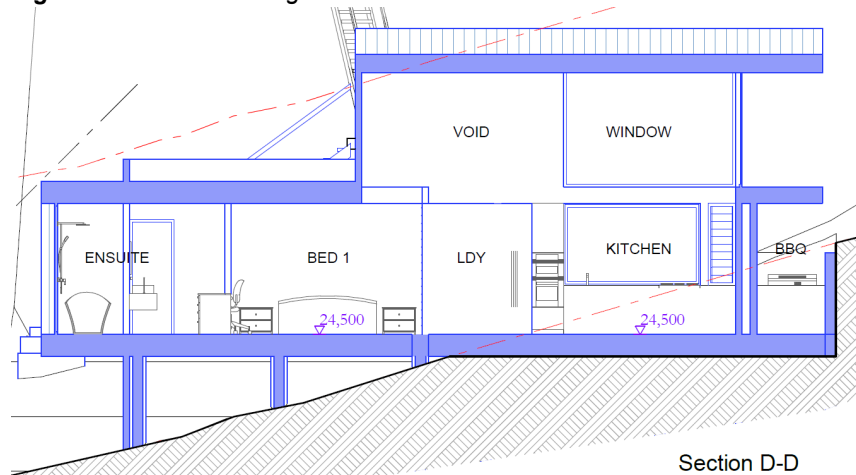


Figure 3: Amended Design



- **Traffic Management Plan**

The submissions noted that given the difficult topography of the site, difficult access and the parking restrictions along Ocean Road, it is imperative that a comprehensive traffic management plan be submitted and strictly adhered to to ensure the safety of pedestrians and road users.

Comment:

A condition has been included within the recommendations of this report requiring the preparation and implementation of a Construction Traffic Management Plan.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<u>Supported, subject to conditions</u> The application as described in reports and as illustrated on plans is assessed by Landscape Referral against the Pittwater Local Environment Plan (PLEP) clause C4 zone Environmental Living, and the following Pittwater 21 Development Control Plan (PDCP) controls (but not limited to): B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; and D12 Palm Beach Locality. The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment with ecological, scientific or aesthetic values, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone. It is noted that the proposed works do not impact upon prescribed trees and/or native vegetation. The comments from Natural Environment Referral Response - Biodiversity, are noted including the requirement for protection of the natural habitat, consisting of native vegetation and rock outcrops. A Landscape Plan is submitted indicating additional planting around the perimeter of the secondary dwelling, and generally no concerns are raised, except specific nominated species that are environmental weeds shall be deleted and replaced, as imposed by conditions.
NECC (Bushland and Biodiversity)	<u>Supported, subject to conditions</u> The comments in this referral relate to the following applicable controls and provisions: • SEPP (Resilience and Hazards) 2021 - Coastal Environment Area • Pittwater DCP Clause B4.3 Flora and Fauna Habitat Enhancement Category 2 Land The proposal would require the removal of vegetation in a site that is heavily constrained due to the slope of the land. The proposal will require the removal of exempt trees and landscaping is proposed as part of the application including trees and low lying vegetation. Conditions are recommended given that the remnant vegetation is likely to be used as foraging habitat for species and a number of high risk weeds have been detected on site.
NECC (Coast and Catchments)	<i>Supported without conditions</i> Officer comments The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.

Internal Referral Body	Comments
	Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by NBP dated October 2024, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP. As such, it is considered that the application is generally consistent with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Pittwater LEP 2014 and Pittwater 21 DCP The property is located within a "Wave Inundation" area designated on the Coastal Risk Planning Map that is referenced in Pittwater Local Environmental Plan 2014. The subject property is also mapped as being land identified under Coastline Beach Hazard Area on the Pittwater 21 Development Control Plan (DCP) Coastal Hazards Map MDCP016. As such, the Coastal Risk Management Policy for Development in Pittwater (Appendix 6, Pittwater 21 DCP) and the relevant B3.3 Coastline (Beach) Hazard controls in P21 DCP and information requirements would normally apply for this property. As the proposed development is at an elevation of over 20m AHD it will not be impact by coastal inundation. Therefore, the proposal as been assessed as complying with Pittwater LEP 2014 and Pittwater 21 DCP without a Coastal Hazard Assessment being submitted with the application.
NECC (Development Engineering)	<u>Supported, subject to conditions</u> The proposed development is in Region 1. The submitted stormwater management plans have not addressed the requirement for on-site detention. On-site detention is required for the secondary dwelling proposed development in accordance with Table 7 of Section 9.3.1 of the Water for Management for Development Policy. Engineering Comments 13.03.25

Internal Referral Body	Comments
	The revised stormwater management plans provide for water retention only. Please provide detention in accordance with Table 7 of Section 9.3.1 of the Water for Management for Development Policy. Engineering Comments 08.04.25 Revised stormwater management plans have been provided showing the provision of on-site detention. Development engineering raises no further objections to the proposed development, subject to conditions.
Parks, reserves, beaches, foreshore	Supported without conditions The development site adjoins Ocean Road that is located downslope of the property, and is across from Palm Beach foreshore. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. For information purposes it is noted that existing encroachments occur into the road reserve, as shown on the Survey Plan. Any approval of this development application does not regularise any unauthorised encroachments within the road reserve. The development is not detrimental to the prevailing landscape character when viewed from the adjoining foreshore, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.

External Referral Body	Comments		
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported, subject to conditions The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.		
Aboriginal Heritage Office	Supported, subject to Conditions		
	Recommendation		
	APPROVAL	Subject to Conditions No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed	

External Referral Body	Comments		
			development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.
Roads and Maritime Service - Roads Act 1993, s138 (Non-integrated)	<i>Supported, subject to conditions</i> The proposal was referred to Transport for NSW who provided a response stating that the proposal is acceptable subject to conditions. These 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. 1785595S dated 28 February 2025).

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: (i) no more than 60m², 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.	Yes. No dwellings other than the principal dwelling and secondary dwelling will be located on the land. N/A. No floor space ratio control applies to the site. Yes. The total floor area of the secondary dwelling is 55.3m².

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 .	Yes. The site has an area of 1,060m 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.	Yes. 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.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

Transport for NSW (TfNSW)

Section 2.119 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment:

Despite having frontage to a classified road, being Ocean Road, the site also fronts Sunrise Road, whereby vehicular access to the land is facilitated. The safety, efficiency and ongoing operation of the classified road will also not be adversely affected, and the development is appropriately located and designed to ameliorate potential traffic noise or vehicle emissions arising from Ocean Road. The development application was referred to TfNSW, who provided a response stating that they have no objections to the proposal, subject to conditions, which have been included in the recommendations of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:

- a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
- b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
- c) the carrying out of any of the following:
 - i) earthworks (including the depositing of material on land),
 - ii) constructing a levee,
 - iii) draining the land,
 - iv) environmental protection works,
- d) any other development

Comment:

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

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

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

Comment:

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

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

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

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The site is identified within the 'coastal environment area'; however, the proposal has been designed and sited to minimise site disturbance. The proposal has been supported by Council's Landscape, Biodiversity, Coastal, and Parks and Reserves Officers, subject to conditions. The proposal has also been supported by the Aboriginal Heritage Office, subject to recommended conditions. Therefore, it is considered that the proposal is unlikely to cause an adverse impact on (a) to (g).

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

Comment:

The site is identified within the 'coastal environment area'; however, the proposal has been designed and sited to minimise site disturbance. The proposal has been supported by Council's Landscape, Biodiversity, Coastal, and Parks and Reserves Officers, subject to conditions. The proposal has also been supported by the Aboriginal Heritage Office, subject to recommended conditions. Therefore, it is satisfied that the development is designed, sited and will be managed to avoid any adverse impacts.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

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

Comment:

The site is identified within the 'coastal use area'; however, the proposal has been designed and sited to minimise site disturbance. The proposal has been supported by Council's Landscape, Biodiversity, Coastal, and Parks and Reserves Officers, subject to conditions. The proposal has also been supported by the Aboriginal Heritage Office, subject to conditions. Therefore, it is satisfied that the proposal achieves the above requirements.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposal has been designed and sited to minimise site disturbance. The proposal has been supported by Council's Landscape, Biodiversity, Coastal, and Parks and Reserves Officers, subject to conditions. The proposal has also been supported by the Aboriginal Heritage Office, subject to conditions. Therefore, it is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on the land or other land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

No certified coastal management program applies to the land.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	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:	5.5m	7.7m	40% (2.2m)	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The proposed works are located on land zoned C4 Environmental Living under the Pittwater Local Environmental Plan 2014.

The proposal has been assessed against the objectives of the C4 zone and in this instance, the proposal satisfies the objectives, as detailed below.

- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

Comment:

The proposal will continue to provide for low-impact residential development within an area that contains special ecological, scientific or aesthetic values.

- ***To ensure that residential development does not have an adverse effect on those values.***

Comment:

The proposed dwelling has been designed and sited to minimise site disturbance. The proposal has also been supported by Council's Landscape, Biodiversity, Coastal and Parks and Reserves Officers, subject to conditions. It is therefore satisfied that the proposal will not adversely affect those values.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

Comment:

The proposal will continue to provide for residential development of a low density and scale that is integrated with the landform and landscape as the works involve pier and post construction of a single storey secondary dwelling house.

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

Comment:

The proposal provides a compliant amount of landscaped areas on the site and does not involve the removal of any trees or native vegetation. The proposed development does not negatively impact riparian and foreshore vegetation and wildlife corridors, and has been supported by Council's Landscape, Biodiversity, Coastal and Parks and Reserves Officers, subject to conditions.

4.6 Exceptions to development standards

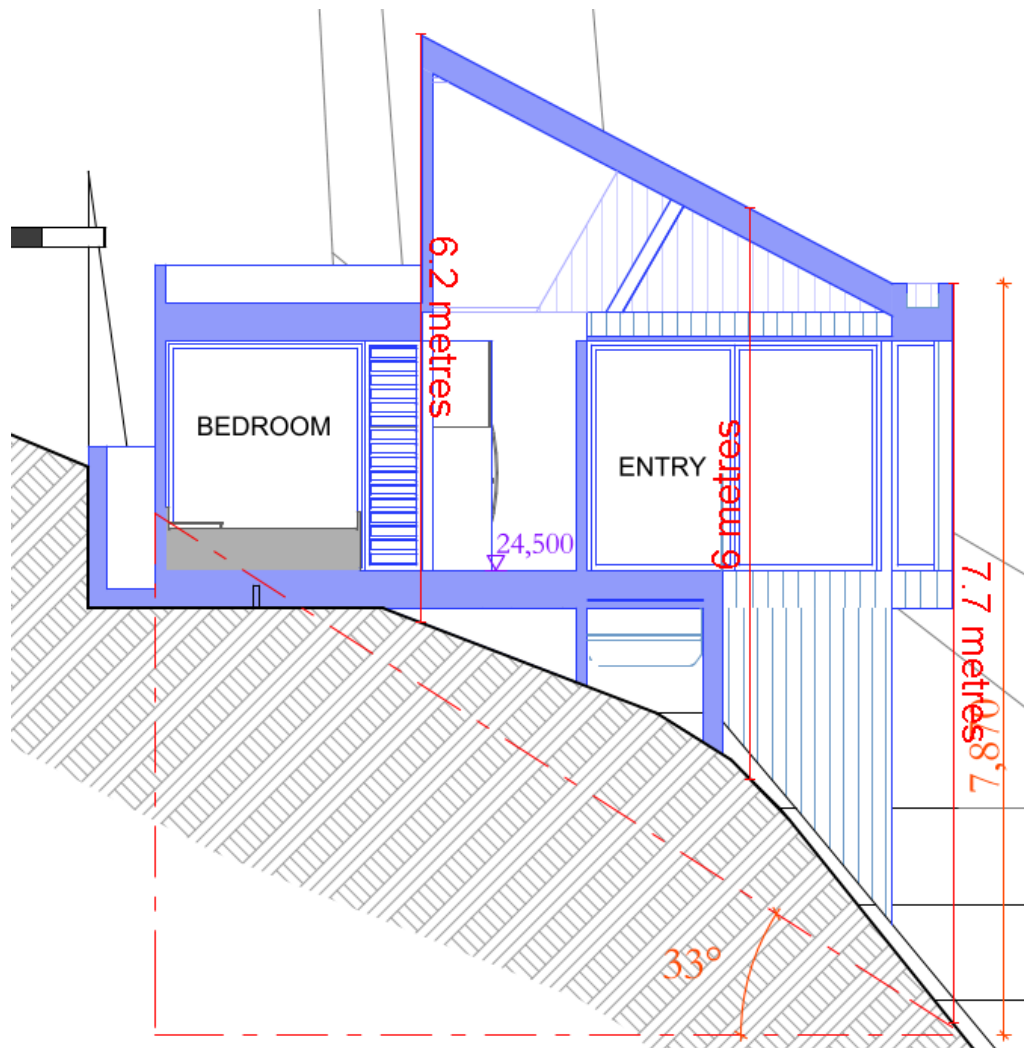
The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3(2FA) Height of Buildings

Requirement: 5.5m

Proposed: 7.7m

Percentage of variation: 40%



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

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of Buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- The proposed secondary dwelling achieves the objectives of the height of buildings standard, despite the non-compliance with the development standard.
- The height breach is associated with the steep fall of the land and the pier and post construction proposed to minimise excavation, site disturbance and impacts to existing rock outcrops on the site.
- The height breach will not create any unreasonable overshadowing impacts upon adjoining properties.
- The portions of the dwelling above the 5.5m height plane do not result in any unreasonable impacts upon existing views as the site is densely vegetated and the building sits below the height of the adjacent rock outcrops and canopy trees.

(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:

- The land falls steeply across the site from Sunrise Road down towards Ocean Road.
- The secondary dwelling has been designed and sited to minimise site disturbance and avoid impact to the existing rock outcrops on the site.
- The proposed pier and post construction means that the floor level sits above the existing ground level, and combined with the slope of the land, results in building height exceedances.

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

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

Public Interest:

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

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances in relation to the steep slope of the land and pier and post construction of the dwelling to minimise site disturbance, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

7.2 Earthworks

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

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

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

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

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

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

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

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

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

7.5 Coastal risk planning

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 the development:

(a) is not likely to cause detrimental increases in coastal risks to other development or properties, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, it is satisfied that the development is not likely to cause detrimental increases in coastal risks to other development or properties.

(b) is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, it is satisfied that the development is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment.

(c) incorporates appropriate measures to manage risk to life from coastal risks, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, it is satisfied that the development incorporates appropriate measures to manage risk to life from coastal risks.

(d) is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, it is satisfied that the development is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards.

(e) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, it is satisfied that the development provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards.

(f) has regard to the impacts of sea level rise, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, it is satisfied that the development has regard to the impacts of sea level rise.

(g) will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, it is satisfied that the development will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for

development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

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

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

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

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

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

- (b) the consent authority is satisfied that:

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

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, it can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	Sunrise Rd (west) - 6.5m	32.2m	N/A	Yes
	Ocean Rd (east) - 5.0m	Building - 12.1m External stairs - 10.5m	N/A	Yes

Side building line	North - 2.5m	Deck - 1.2m Dwelling - 3.9m	52% (1.3m)	No
	South - 1.0m	1.2m	N/A	Yes
Building envelope	North - 3.5m	Within envelope	N/A	Yes
	South - 3.5m	One encroachment of between nil and 0.7m in height for a length of 2.2m	12.1% (0.7m)	No
Landscaped area	60% (636m ²)	59.1% (626.9m ²) +6% impervious = 65.1% (690.5m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.3 Coastline (Beach) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

Clause B6.3 Off-Street Vehicle Parking Requirements of Pittwater 21 Development Control Plan, stipulates two (2) off-street parking spaces for a dwelling house, and an additional one (1) space for a secondary dwelling.

The subject site currently provides off-street parking for two vehicles with a double garage attached to the principal dwelling house, resulting in a shortfall of one parking space.

Notwithstanding, clause 53(2)(b) of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) stipulates the following non-discretionary development standard in relation to secondary dwellings:

"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."

While the proposal is technically non-compliant with the off-street parking requirements of the Pittwater 21 DCP, the Housing SEPP prevails over the DCP. As such, the proposal satisfies the requirements of the Housing SEPP, preventing Council from requiring more onerous parking rates. Therefore, a detailed merit assessment is not required in this instance, and the proposal is acceptable in relation to off-street vehicle parking.

C1.23 Eaves

Description of non-compliance

Section C1.23 Eaves of Pittwater 21 Development Control Plan requires dwellings to incorporate eaves on all elevations with a minimum width of 450mm.

The proposed new secondary dwelling includes roofing without eaves.

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.***

Merit consideration

It is considered that the overall design reflects a dwelling house that is suitable and consistent with the coastal character of Pittwater. The proposal is accompanied by a BASIX Certificate that demonstrates appropriate solar access and appropriate shading will be achieved. It is also noted that the proposed development satisfies the necessary commitments of the BASIX SEPP.

For the reasons outlined above, it is concluded that the outcomes of the clause are achieved and is supported on merit in this particular circumstance.

D12.1 Character as viewed from a public place

Section D12.1 of the Pittwater 21 Development Control Plan stipulates that buildings which front the street must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality. Blank street frontage facades without windows shall not be permitted.

The amended proposed secondary dwelling as viewed from Ocean Road is consistent with other development along the streetscape. The development has been designed and sited to avoid significant excavation and retain natural landscape features, such as prescribed trees and rock outcrops. The material, colours and finishes proposed are dark and earthy tones, which complement the landscape setting and character, and the eastern elevation is articulated well with many different windows, roof forms and modulation, as evident in Figure 4 below. The proposed development as amended provides an appropriate visual transition between densely vegetated lots to the north and development fronting Ocean Road further north and to the south, as evident in Figures 5 and 6 below.

Figure 4: Eastern elevation

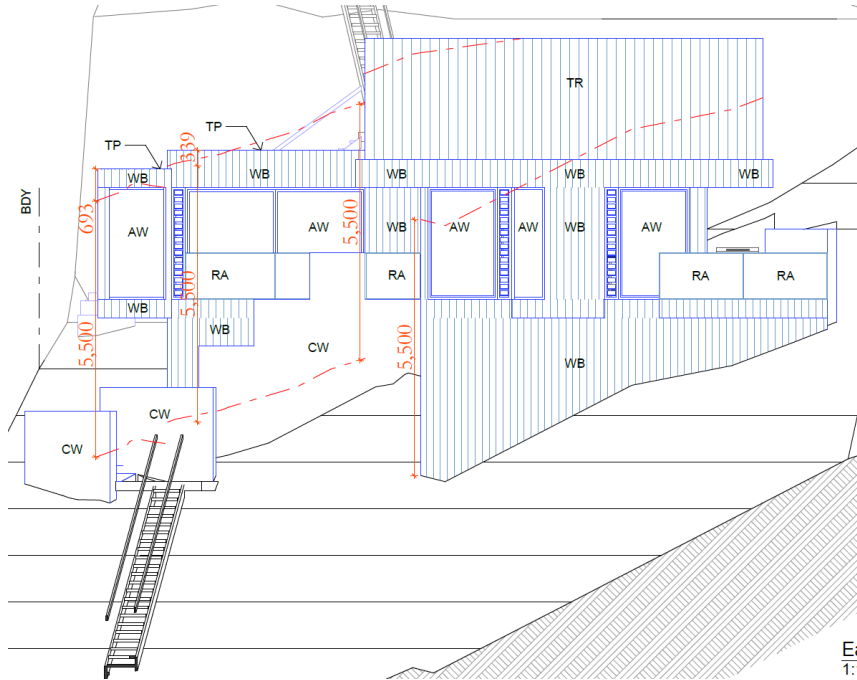


Figure 5: Aerial image of site and surrounding development

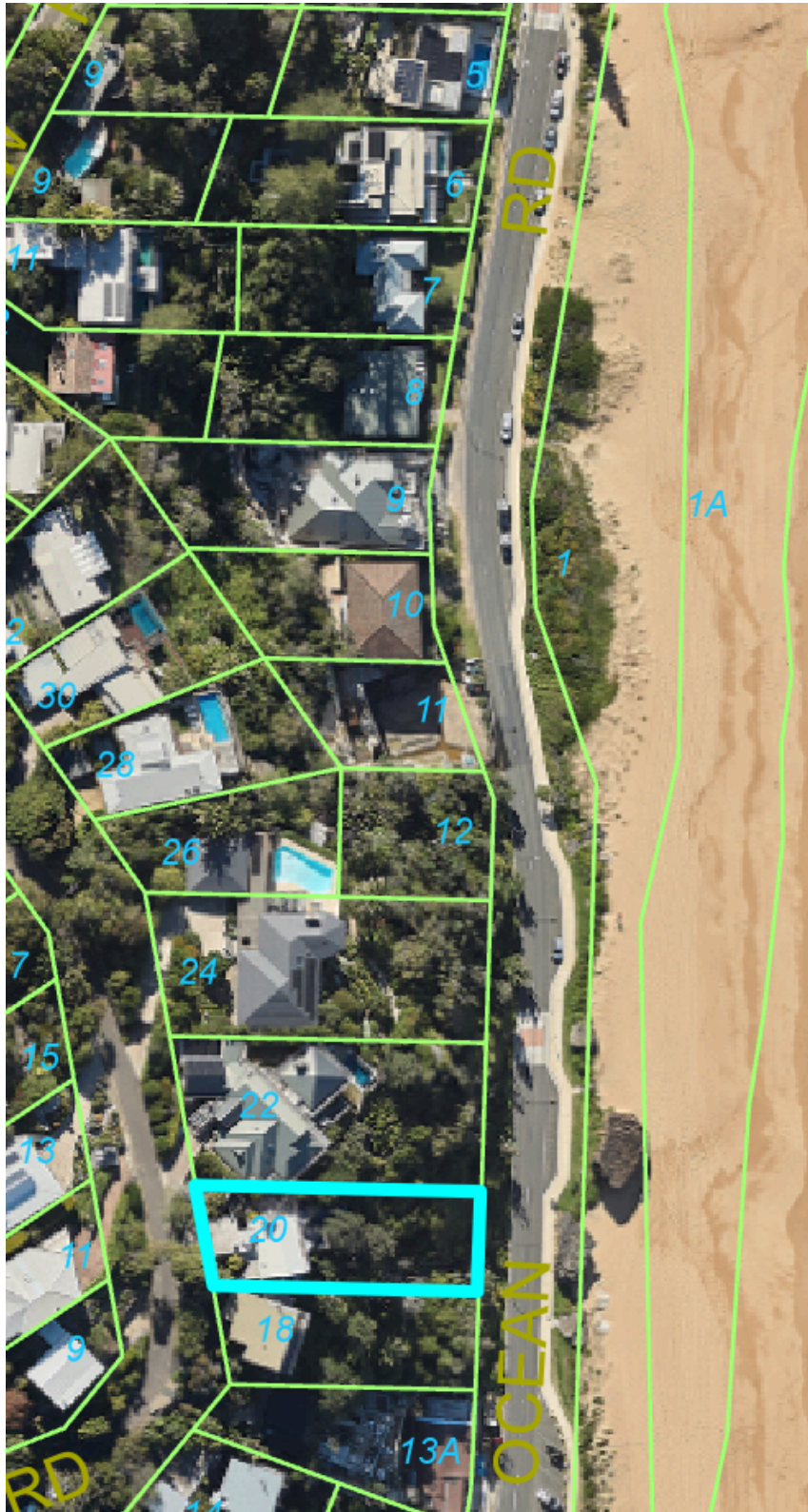




Figure 6: Photo of site from Ocean Road facing south-west



Consideration against objectives:

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

- ***To achieve the desired future character of the Locality.***

Comment:

The amended proposal is consistent with the desired future character of the Palm Beach locality as the dwelling maintains a low-density residential character in a landscaped setting that is integrated with the landform and landscape, and minimises site disturbance by avoiding significant excavation.

- ***To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment.***

Comment:

The amended proposal responds to the spatial characteristics of the existing built and natural environment by siting the dwelling such that it avoids excessive excavation or disturbance of rock outcrops and native vegetation.

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

Comment:

The amended proposal is for a one-bedroom dwelling and is not excessive in size and height, and therefore is not completely out of place with the natural environment.

- ***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.***

Comment:

The visual impact of the amended built form is a significant improvement to the original design and is considered secondary to landscaping and vegetation.

- ***High quality buildings designed and built for the natural context and any natural hazards.***

Comment:

The proposed secondary dwelling has been suitably designed to avoid excessive excavation and minimise stormwater runoff impact on the site and surrounding land.

- ***Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum.***

Comment:

The amended proposal does not unreasonably dominate the streetscape and is not inconsistent with other built structures along Ocean Road. The building is single storey and gives an appearance of being nestled within the landscape from the streetscape.

- ***To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.***

Comment:

The amended proposal does not impede district and local views owing to the steep sloping topography of the site and surrounding land, and the dwellings along Sunrise Road towards the ocean views being much higher in elevation than the dwellings fronting Ocean Road.

- ***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 amended proposal ensures the bushland vista of Pittwater is the predominant feature of the landscape as the built form has been designed sensitively to complement the existing landform and landscape. The majority of the site is maintained with existing dense vegetation and tree canopies, thereby retaining the bushland character of Pittwater.

- ***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.***

Comment:

The amended proposal will not impede the public use or enjoyment of the adjacent beach and open spaces.

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

D12.6 Side and rear building line

Detailed description of non-compliance

Pursuant to Section D12.6 of the Pittwater 21 Development Control Plan, the minimum side building line for built structures is 2.5m to at least one side and 1m for the other side.

For this site, the 2.5m requirement is taken to be for the northern boundary and the 1m requirement is taken to be for the southern boundary. The proposed secondary dwelling sits 1.2m from the northern boundary, representing a 52% (1.3m) variation.

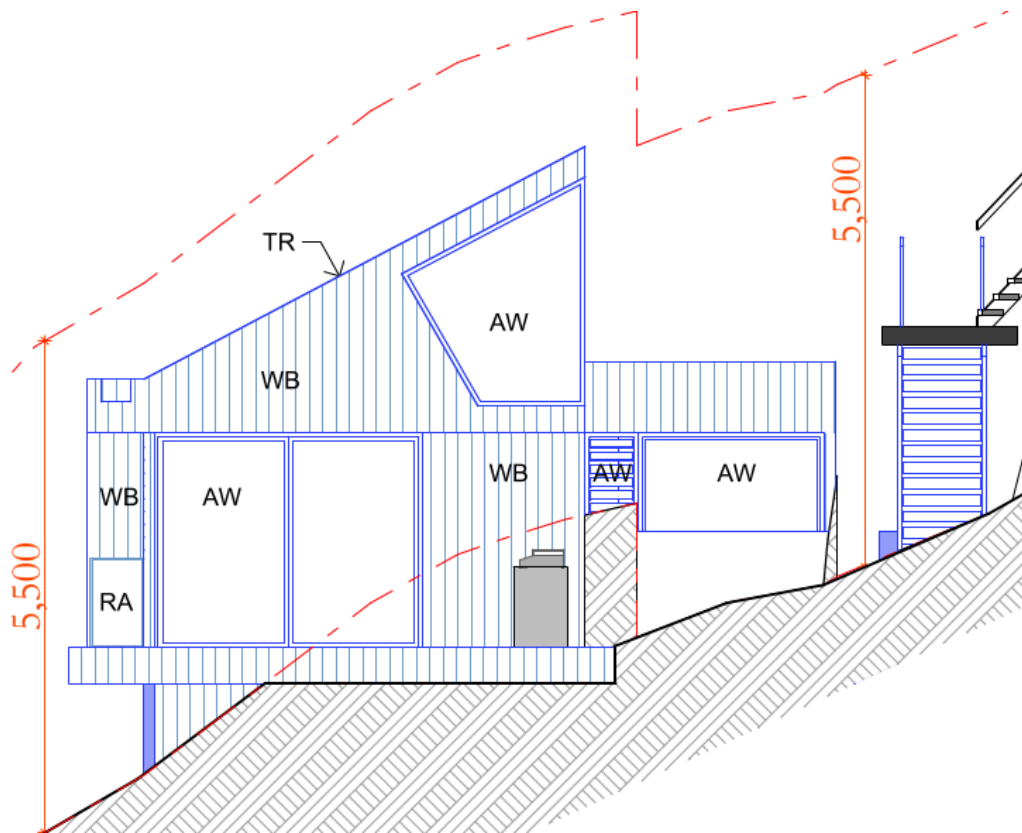
It is important to note that this setback non-compliance is associated with the deck only and the face of the dwelling is compliant with a minimum setback of 3.9m from the northern boundary. Additionally, the dwelling is not sited parallel with the side boundaries and therefore the deck has a ranging setback of 1.2m to 3.8m from the northern boundary, and the face of the dwelling has a ranging setback of 3.9m to 5.2m from the northern boundary. Furthermore, the site and neighbouring properties are highly vegetated towards the rear half (refer Figure 7), and therefore the northern deck does not pose any potential amenity impacts. The deck is an unenclosed, low-lying structure (refer Figure 8), thereby not

presenting significant bulk and scale at the northern boundary.

Figure 7: Site Aerial Image



Figure 8: Northern Elevation



Merit consideration

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

- ***To achieve the desired future character of the Locality.***

Comment:

The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development and generally in keeping with the desired future character of the Palm Beach locality.

- ***The bulk and scale of the built form is minimised.***

Comment:

The bulk and scale of the built form has been minimised through site through building colours and materials and façade articulation.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

Comment:

The steepness of the site and the position of dwellings at a much higher elevation than the proposed development ensures views and vistas to and from public and private places are

preserved.

- ***To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.***

Comment:

The siting of the dwelling at a lower elevation than the building at a higher elevation behind allows for view sharing. The proposal also maintains significant vegetation and the building has been designed to avoid excessive excavation and site disturbance, therefore sitting within the existing landscape, responding sensitively to the landform and natural environment.

- ***To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.***

Comment:

The proposal provides a reasonable level of privacy, amenity and solar access within the development site and maintains this to neighbouring properties due to the siting of the development with respect to surrounding buildings.

- ***Substantial landscaping, a mature tree canopy and an attractive streetscape.***

Comment:

The proposal maintains significant vegetation and a compliant amount of landscaped area across the site. The building has been designed to avoid excessive excavation and site disturbance, therefore sitting within the existing landscape, responding sensitively to the landform and natural environment. The building is a single storey development that is surrounded by large canopy trees and dense vegetation, thereby providing an attractive landscape.

- ***Flexibility in the siting of buildings and access.***

Comment:

Flexibility has been afforded in the siting of the deck given the densely vegetated surrounds and no direct interface with the neighbouring property.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment:

The proposal does not involve the removal of any native trees or significant vegetation, thereby remaining heavily vegetated, which visually reduces the built form.

- ***To ensure a landscaped buffer between commercial and residential zones is established.***

Comment:

The site is not located adjacent to any commercial zones and therefore this objective is not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the P21DCP and the objectives specified in s1.3 of the *Environmental Planning*

and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

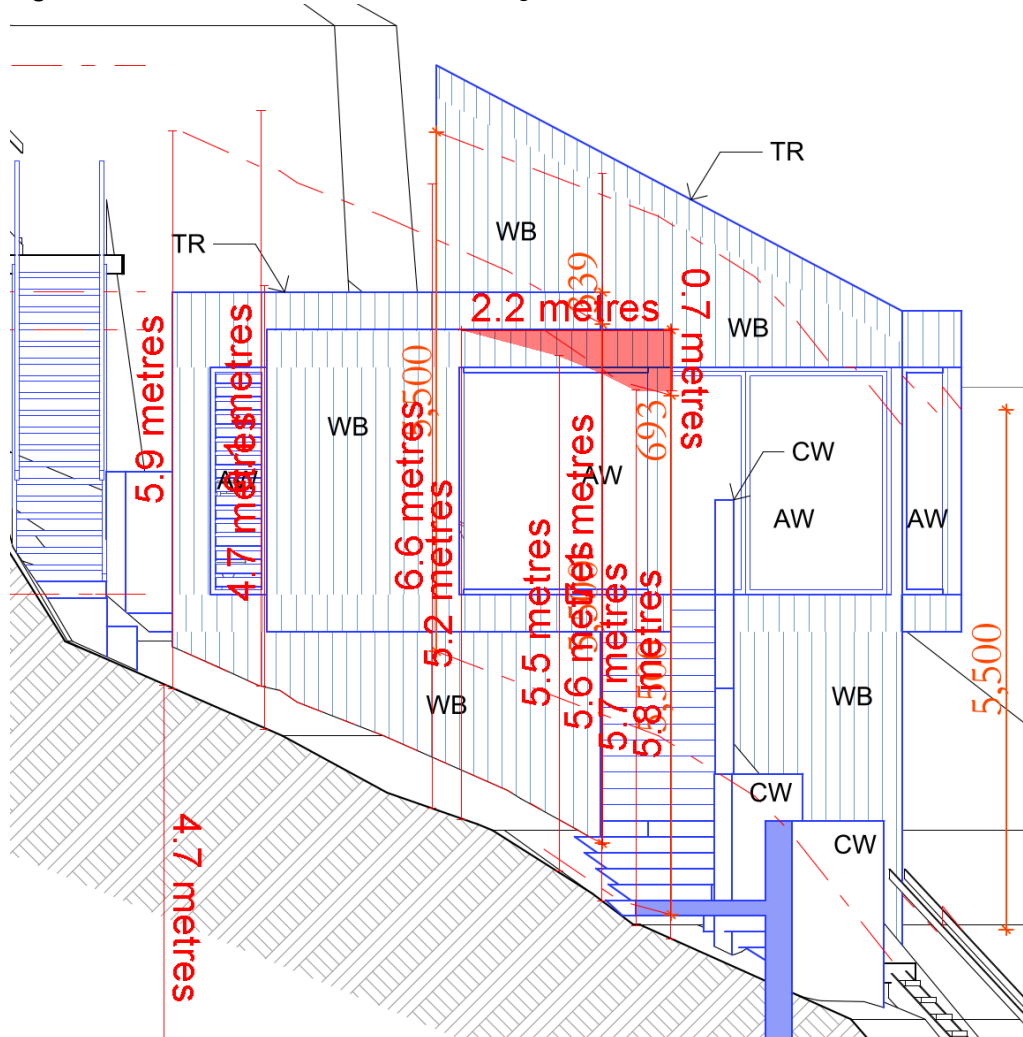
D12.8 Building envelope

Detailed description of non-compliance

Pursuant to Section D12.8 Building envelope of the Pittwater 21 Development Control Plan, buildings must be sited within the building envelope which is determined by projecting planes at 45° from a height of 3.5m above the existing ground level at the side boundaries. Where the building footprint is situated on a slope over 30%, variation to this control will be considered on a merits basis.

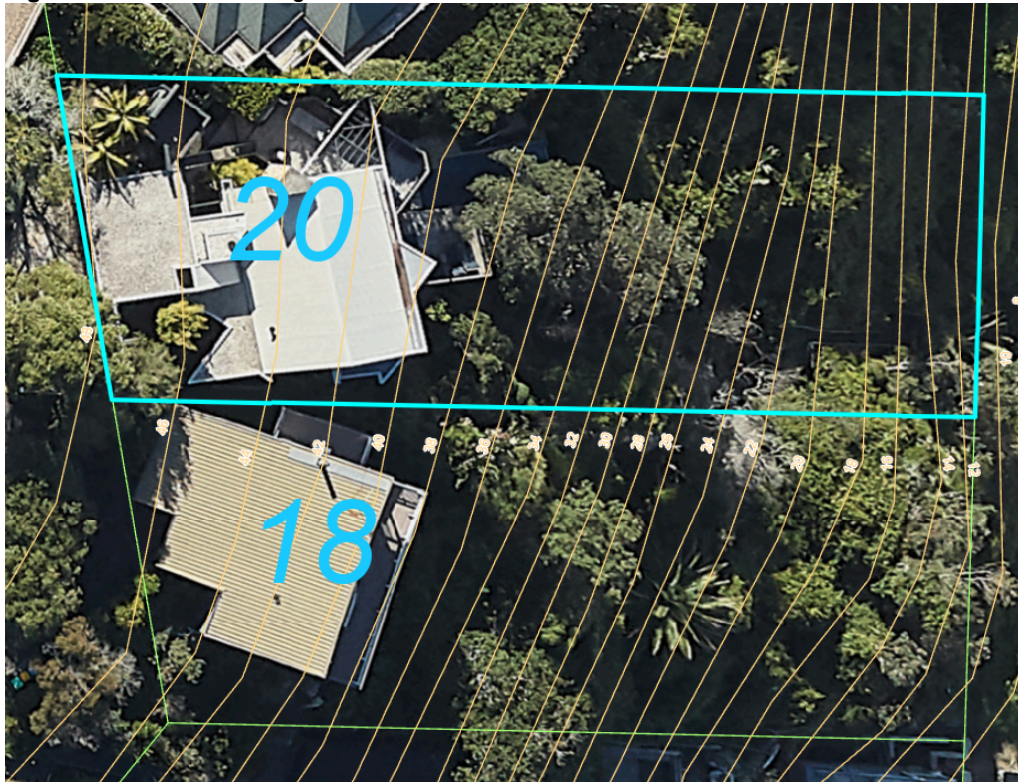
The southern elevation presents an encroachment of between nil and 0.7m in height for a length of 2.2m, resulting in a maximum variation of 12.1% (0.7m), as shown shaded red at Figure 9 below.

Figure 9: Southern Elevation - Amended Design



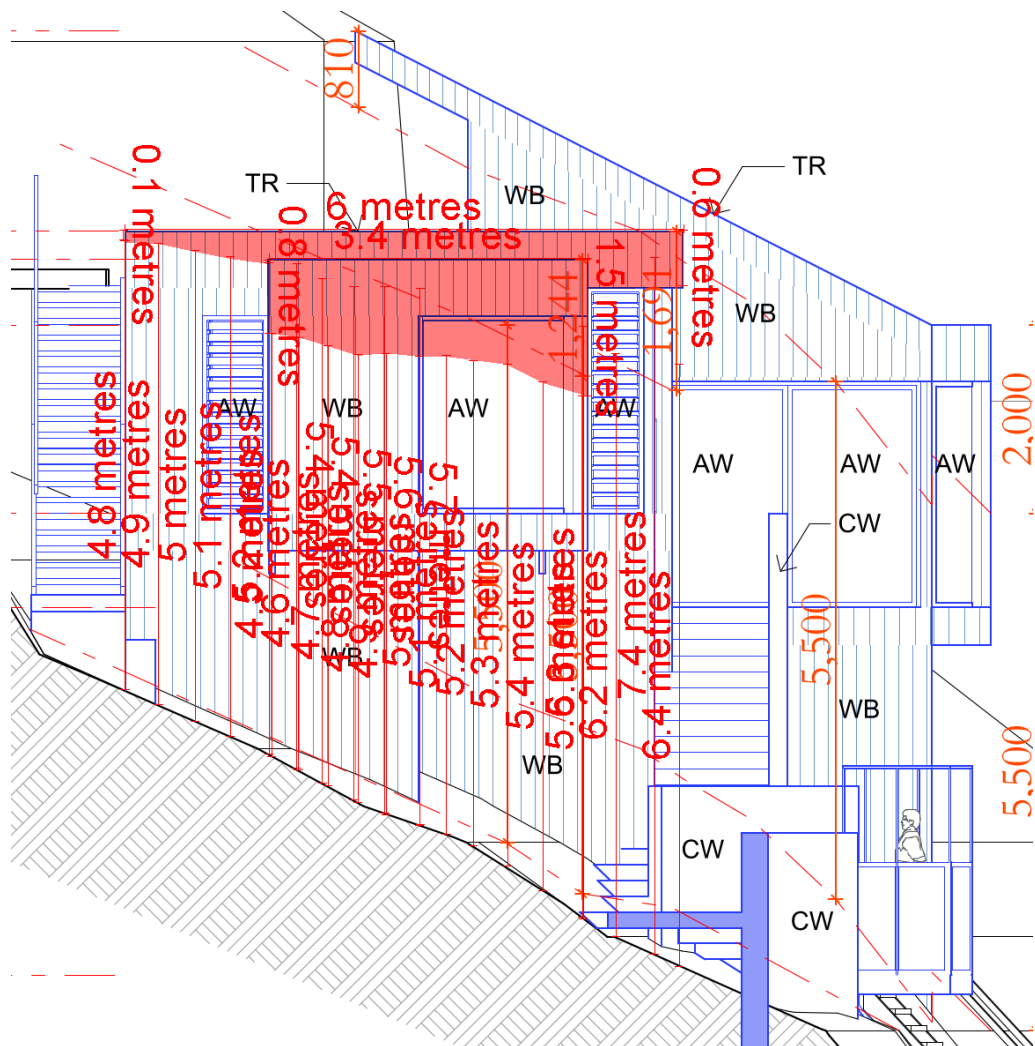
It is important to note that this envelope breach is only for a very small corner of the southern elevation and the site slopes steeply at approximately 55% at this portion. Additionally, the southern wall at this point is compliant with the southern side building line of 1m at 1.2m to 2.3m. Furthermore, the site and neighbouring properties are highly vegetated towards the rear half (refer Figure 10), and therefore the southern elevation does not pose any potential amenity impacts. The envelope breach also does not include any glazing.

Figure 10: Site Aerial Image



It is also important to note that the original design presented an encroachment of between 0.1m and 0.6m in height for a length of 6m, and an encroachment of between 0.8m and 1.5m in height for a length of 3.4m, resulting in a maximum variation of 27.8% (1.5m), as shown shaded red at Figure 11 below.

Figure 11: Southern Elevation - Original Design



Merit consideration

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

- ***To achieve the desired future character of the Locality.***

Comment:

The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development and generally in keeping with the desired future character of the Palm Beach locality.

- ***To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.***

Comment:

The proposal maintains significant vegetation and a compliant amount of landscaped area

across the site. The building has been designed to complement the slope of the land and therefore sits within the existing landscape, responding sensitively to the landform and natural environment. The building is a single storey development that is surrounded by large canopy trees and dense vegetation.

- ***To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.***

Comment:

The development is considered to adequately respond to the spatial characteristics of the existing natural and built environments. The overall scale of the proposal is in keeping with other residential dwellings in the vicinity of the site.

- ***The bulk and scale of the built form is minimised.***

Comment:

The bulk and scale of the built form has been minimised building colours and materials and through façade articulation.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

Comment:

The steepness of the site and the position of dwellings at a much higher elevation than the proposed development ensures views and vistas to and from public and private places are preserved.

- ***To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties.***

Comment:

The proposal provides a reasonable level of privacy, amenity and solar access within the development site and maintains this to neighbouring properties due to the siting of the development with respect to surrounding buildings.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment:

The proposal does not involve the removal of any native trees or significant vegetation, thereby remaining heavily vegetated, which visually reduces the built form.

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

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 \$11,440 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,144,000.

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

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

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

PLANNING CONCLUSION

This proposal, for the construction of a secondary dwelling, has been referred to the Development Determination Panel (DDP) due to the height of the building resulting in a 40% variation to Clause 4.3(2FA) of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

The proposal is supported by a detailed written Clause 4.6 variation request, demonstrating that compliance with the development standard is considered unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify contravention of the development standard. The particular circumstances of this site relate to the steep sloping topography of the land with significant rock outcrops, and the subsequent need for post and pier construction to minimise site disturbance.

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

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

REASON FOR DETERMINATION

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2024/1383 for Construction of a secondary dwelling on land at Lot 140 DP 11552, 20 Sunrise Road, PALM BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA4	A	Site, Site Analysis & Waste Management & Stormwater Concept Plan	Northern Beaches Drafting	25 February 2025
DA5	A	Sub Floor Plan	Northern Beaches Drafting	25 February 2025
DA6	A	Ground Floor Plan	Northern Beaches Drafting	25 February 2025
DA7	A	Roof Floor Plan	Northern Beaches Drafting	25 February 2025
DA8	A	North Elevation	Northern Beaches Drafting	25 February 2025
DA9	A	South Elevation	Northern Beaches Drafting	25 February 2025
DA10	A	East Elevation	Northern Beaches Drafting	25 February 2025
DA11	A	West Elevation	Northern Beaches Drafting	25 February 2025
DA12	A	Section A-A, B-B, C-C	Northern Beaches Drafting	25 February 2025
DA13	A	Section D-D	Northern Beaches Drafting	25 February 2025
DA14	A	Landscaping Plan	Northern Beaches Drafting	25 February 2025
CDC121	A	Window Schedule - 01	Northern Beaches Drafting	25 February 2025
CDC122	-	Window Schedule - 02	Northern Beaches Drafting	26 February 2025
CDC123	-	Window Schedule - 03	Northern Beaches Drafting	26 February 2025
CDC124	-	Window Schedule - 04	Northern Beaches Drafting	26 February 2025
CDC125	-	Window Schedule - 05	Northern Beaches Drafting	26 February 2025
D-2353-1B	B	Stormwater Management Plan	Civil Structural Engineering Design Services Pty Ltd	8 April 2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document

Schedule of colours, materials and finishes	A	Northern Beaches Drafting	25 February 2025
Waste Management Plan	-	Author Unknown	16 October 2024
BASIX Certificate	1785595S	Sustain Build Projects	28 February 2025
NatHERS Certificate	5CM2OD28WI	Natascha Harakidas	28 February 2025
Geotechnical Report	J5281	White Geotechnical Group	23 September 2024
Geotechnical Statement	J5281A	White Geotechnical Group	26 March 2025

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	1 November 2024
Transport for New South Wales	Transport for New South Wales Referral Response	1 November 2024
Aboriginal Heritage Office	Aboriginal Heritage Office Referral Response	29 October 2024

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

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

3. 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 \$11,440.00 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 \$1,144,000.00.

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

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

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

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

6. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. No Clearing of Vegetation

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

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

Reason: To protect native vegetation.

8. 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 Civil Structural Engineering Design Services Pty Ltd, drawing number D-2353-1B, dated 08.04.2025. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. Provision of a minimum of 6 cubic metres of on-site detention storage.
- ii. Orifice is to be sized in accordance with Table 7 of the Water Management for Development Policy Version 2, 26 February 2021.

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 White Geotechnical Group dated 23.09.2024 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to

be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Boundary Identification Survey**

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

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

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

11. **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.

12. **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.

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.

14. **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.

15. **Marked Boundary**

Prior to the issue of a Construction Certificate, the side boundaries of the site shall be marked / pegged by a registered surveyor with stakes at 5m intervals connected with string line from Ocean Road up to the Sunrise Road frontage. The marked boundaries shall be confirmed by the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure all proposed works are wholly located within the property boundary.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **Sediment and Erosion Controls**

For developments that include more than 2500sqm of disturbance:

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

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

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

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

The ESCP must include the following as a minimum:

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

- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected,
- North point and scale,
- Type of erosion control measures to divert and slow run-off around and within the site.

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

- Identify and mark any environmentally sensitive areas on and immediately next to the site and how you will protect these, including any appropriate buffer zones (for example, marking them out as 'no-go' areas),
- Details on vegetation you will clear, as well as areas of vegetation you will keep (mark no go areas),
- Detail on soil information and location(s) of problem soil types, especially dispersive soils and potential or actual acid sulfate soils,
- Location of any natural waterways that could receive run-off and how these will be protected these from run-off.

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

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

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

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

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

DURING BUILDING WORK

17. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all prescribed trees and native vegetation within the site, including existing trees 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,

- ii) the following arboricultural requirements shall be adhered to unless authorised by an Arborist with minimum AQF level 5 qualifications: existing ground levels shall be maintained within the tree protection zone of trees to be retained; removal of existing tree roots at or >25mm (Ø) diameter is not permitted; 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; and structures are to bridge tree roots at or >25mm (Ø) diameter,
- iii) 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,
- iv) 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,
- v) 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 compliance to AS4970-2009 Protection of trees on development sites.

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. 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.

23. 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.

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. 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.

26. 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.

27. 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.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

28. 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) planting shall be installed as indicated on the approved Landscape Plan, unless otherwise imposed by conditions,
- c) as a minimum by quantity at least 80% of new planting shall be native vegetation species,
- d) Pennisetum and Purple Fountain species as nominated are not permitted, and shall be replaced with non self-seeding species of similar form and size or otherwise native shrubs,
- e) mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.

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. 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

36. Landscape Maintenance

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

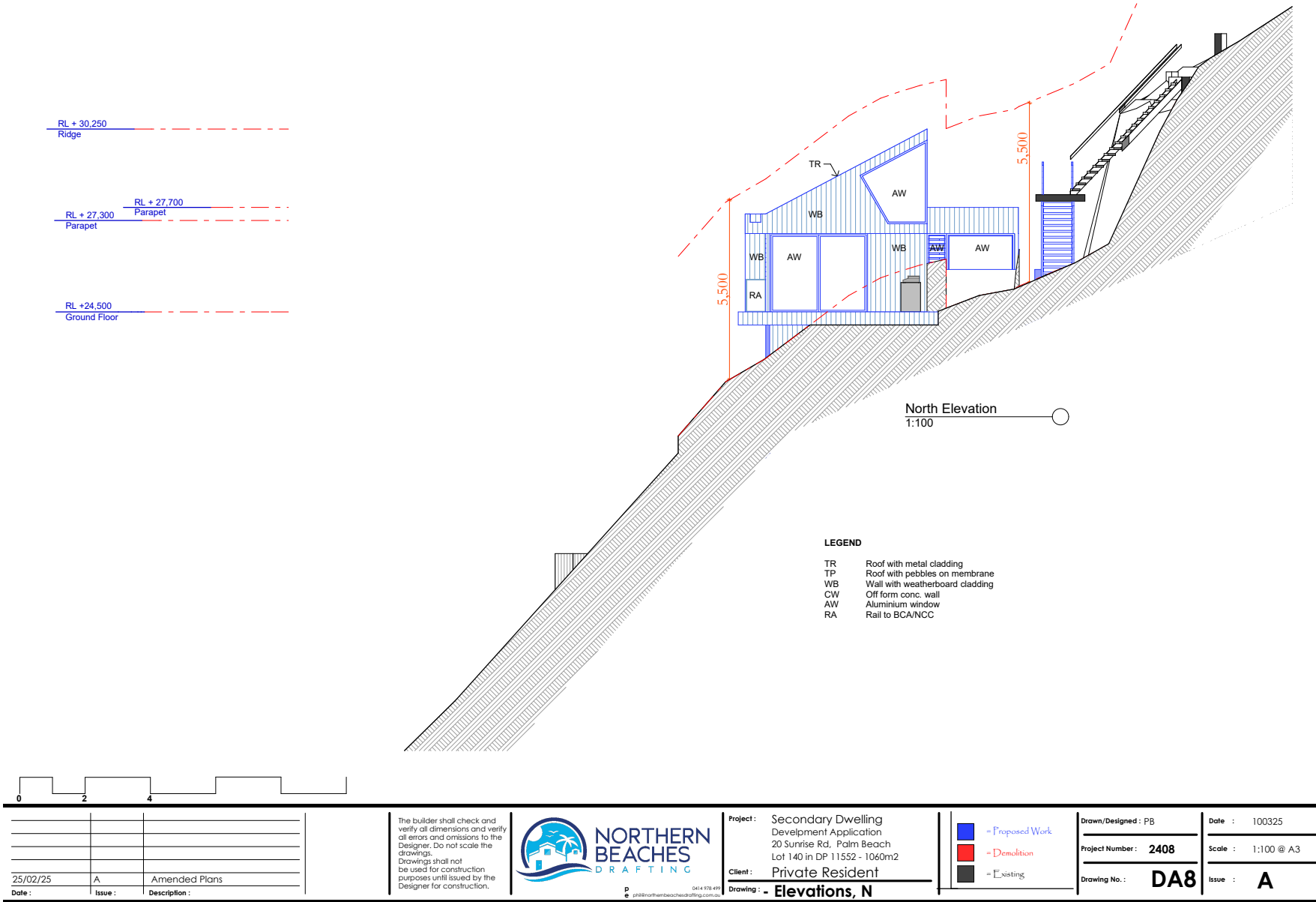
37. Control of Domestic Dogs/Cats

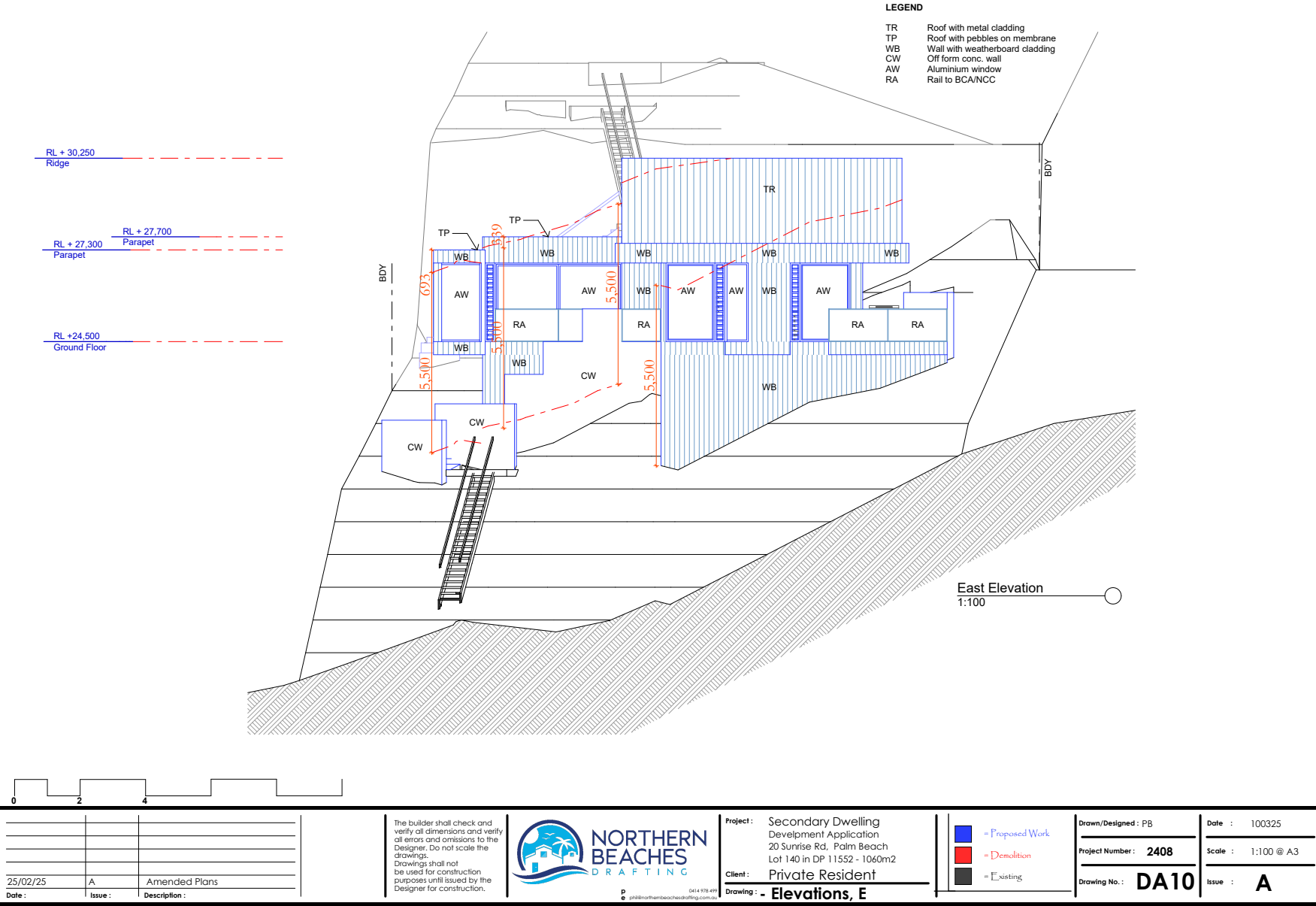
Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

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.

					The builder shall check and verify all dimensions and verify all errors and omissions to the Designer. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Designer for construction.				Project : Secondary Dwelling Development Application 20 Sunrise Rd, Palm Beach Lot 140 in DP 11552 - 1060m2		 = Proposed Work  = Demolition  = Existing		Drawn/Designed : PB Project Number : 2408		Date : 100325 Scale : 1:200 @ A3	
25/02/25 Date :			A Issue :		Amended Plans Description :				Client : Private Resident		Drawing : - Site, Site Analysis & Waste Management Plan		Drawing No. : DA4		Issue : A	







*request to vary
a development standard*



REQUEST TO VARY A DEVELOPMENT STANDARD (Amended)

20 SUNRISE ROAD
PALM BEACH NSW 2108

March 2025

Prepared by Rebecca Englund
B Arch Studies | M Plan | MPIA

Director | Northern Beaches Planning

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1

introduction

This request to vary a development standard is made by Northern Beaches Planning on behalf of John Daubney to accompany the lodgement of a development application for the construction of a secondary dwelling at 20 Sunrise Road, Palm Beach (**site**). This request is made pursuant to clause 4.6 of Pittwater Local Environmental Plan 2014 (**PLEP 2014**) and with regard to relevant case law.

standard to be varied

Clause 4.3 of PLEP 2014 limits the height of development on a site in accordance with that nominated on the Height of Buildings Map of PLEP 2014. With respect to the subject site, the maximum height of buildings is 8.5m above ground level (existing).

However, despite subclause (2), subclause (2FA) of clause 4.3 of PLEP 2014 limits the height of a detached secondary dwelling on land within the C4 Environmental Living zone to 5.5m.

The maximum building height prescribed for a detached secondary dwelling by clause 4.3(2FA) of PLEP 2014 is a development standard, as defined by the Environmental Planning and Assessment Act (EP&A Act):

***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...

Accordingly, the provisions of clause 4.6 of PLEP 2014 can be applied.

Pursuant to clause 4.6(2) of PLEP 2014, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the height of buildings development standard of clause 4.3(2FA) of PLEP 2014 is not expressly excluded and thus, the provisions of clause 4.6 can be applied in this instance.

extent of the proposed breach

The proposed secondary dwelling has a maximum building height of 7.87m, representative of a 2.37m or 43% variation to the 5.5m maximum building height prescribed. The height non-compliance is not carried across the entirety of the building, but is limited to minor sections of the building, as demonstrated in the Architectural Plans and as shown in Figure 1.

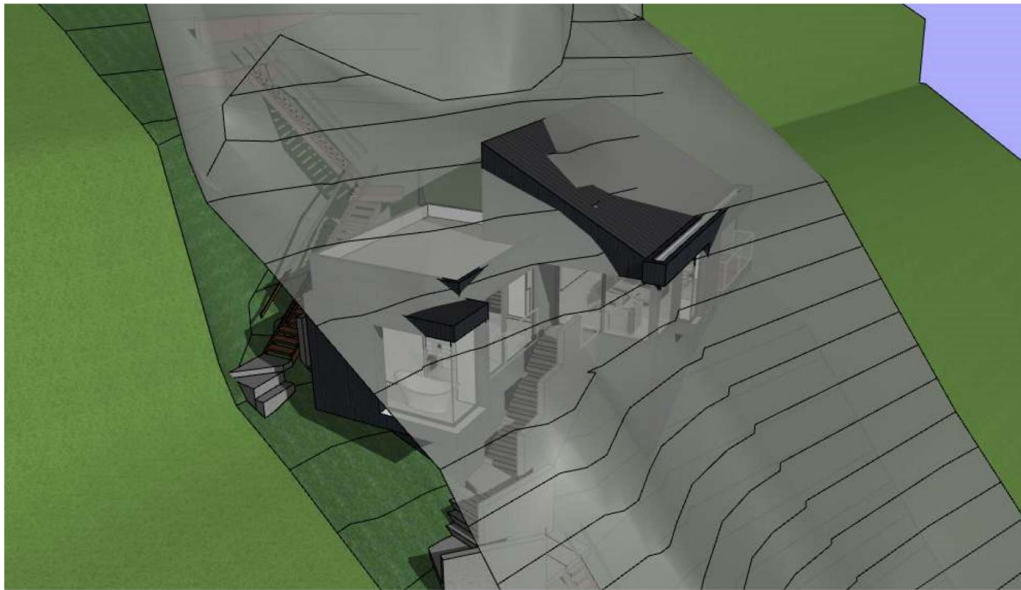


Figure 1 – 5.5m Height Blanket Diagram
Source: Northern Beaches Drafting

unreasonable or unnecessary

Pursuant to clause 4.6(3)(a) of PLEP 2014, consent can only be granted if the consent authority is satisfied that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard.

The proposed development is consistent with the objectives of the height of buildings development standard, as prescribed by clause 4.3(1) of PLEP 2014, as follows:

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Comment: The desired future character of the Palm Beach Locality is identified in clause A4.4 of P21 DCP, which states the following with respect to height and scale:

The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape... Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale.

The resultant secondary dwelling will sit below the canopy of nearby canopy trees and is stepped in response to the slope of the site. The height non-compliance arises due to the fall of the land and the light-weight construction method proposed, whereby pier and post construction is to be employed to minimise site disturbance and maintain the natural fall of the land.

As concluded in the matter of *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021], the desired future character of the locality can be evaluated by reference to matters other than the development standards that determine the building envelope for the site, including the existing development that forms the built context of the site.

The height and scale of the development is recessive and secondary to nearby buildings and is commensurate with that of nearby secondary dwellings in the visual catchment of the site (such as that at 13A Ocean Road).

- (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment: The height and scale of the resultant dwelling is compatible with surrounding dwellings. Consistent with the findings of the NSW LEC in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, to be compatible in an urban design context is to be capable of existing in harmony together. The resultant dwelling will sit harmoniously in its context on the high side of Ocean Road, and most observers would not find the height or bulk of the proposed development to be offensive, jarring or unsympathetic in this particular context.

- (c) *to minimise any overshadowing of neighbouring properties,*

Comment: The application is supported by shadow diagrams which confirm that the proposed development will not result in any unreasonable impacts upon adjoining properties with regard to solar access. In particular, the non-compliant elements do not result in unreasonable overshadowing of adjoining areas of private open space or windows of living rooms.

- (d) *to allow for the reasonable sharing of views,*

Comment: The portions of the dwelling that extend above the 5.5m height plane do not result in any unreasonable impacts upon existing views, with views to the beach to be retained over the proposed development.

- (e) *to encourage buildings that are designed to respond sensitively to the natural topography,*

Comment: The structure is to be predominantly supported on pier and post construction to minimise site disturbance and sit lightly on the land. The floor plate is somewhat irregularly shaped to avoid impacts upon existing rock outcrops on the site.

- (f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Comment: The proposed secondary dwelling is highly articulated and is to be finished in dark colours to blend with the surrounding natural environment. Existing landscaping will be complemented by additional proposed landscaping to soften the visual impact of the secondary dwelling as seen from both the street and the beach. The proposal will not result in any adverse visual impacts upon the surrounding natural environment.

As such, strict compliance with the maximum building height development standard is unreasonable and unnecessary in the circumstances of this case.

sufficient environmental planning grounds

Pursuant to clause 4.6(3)(a) of PLEP 2014, consent can only be granted if the consent authority is satisfied that the applicant has demonstrated that there are sufficient environmental planning grounds to justify contravention of the standard. The specific environmental planning grounds to justify the proposed contravention of the building height development standard are as follows:

1. Slope of the land

The land falls steeply from the Sunrise Road frontage down towards Ocean Road. Considerable effort has gone into the design of the proposed secondary dwelling to ensure that the building is responsive to the constraints of the site and that it sits lightly on the land. The location of the proposed secondary dwelling was selected as it provides a comparably level building platform in amongst the exposed rock outcrops which are to remain undisturbed.

Pier and post construction is proposed, which not only avoids excessive excavation and retaining walls, but it more practical from a construction perspective given the constraints associated with access. As a consequence of the proposed construction methodology, the floor level sits slightly above existing ground level, and when combined with the fall of the land, results in minor exceedances of the prescribed building height plane.

Allowing for the development to appropriately respond to the individual context of the site, including the irregular terrain of the site, promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, consistent with objectives (g) and (h) of the EP&A Act.

Overall, there are sufficient environmental planning grounds to justify contravention of the building height development standard.

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conclusion

Overall, the consent authority can be satisfied that this written request has adequately addressed all relevant matters and that the provisions of clause 4.6 of PLEP 2014 have been met. As such, there is no jurisdictional impediment to the granting of consent in relation to the proposed breach of the height of buildings development standard.



Rebecca England

B Arch Studies | M Plan | MPIA

Director | Northern Beaches Planning

**ITEM 3.3 MOD2024/0705 - 231 WHALE BEACH ROAD WHALE BEACH -
MODIFICATION OF DEVELOPMENT CONSENT REV2021/0034
GRANTED FOR REVIEW OF DETERMINATION OF APPLICATION
DA2020/0442 FOR DEMOLITION WORKS AND CONSTRUCTION OF A
MIXED USE DEVELOPMENT COMPRISING SHOP TOP HOUSING
AND RETAIL PREMISES, WITH ASSOCIATED CARPARKING,
LANDSCAPING AND STRATA SUBDIVISION**

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 Mod2024/0705 for Modification of Development Consent REV2021/0034 granted for Review of Determination of Application DA2020/0442 for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision on land at Lot B DP 316404, 231 Whale Beach Road WHALE BEACH, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2025/253920
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0705
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Responsible Officer:	Anaiis Sarkissian
Land to be developed (Address):	Lot B DP 316404, 231 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Modification of Development Consent REV2021/0034 granted for Review of Determination of Application DA2020/0442 for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision
Zoning:	E1 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	SJB Planning Pty Ltd

Application Lodged:	06/01/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	17/01/2025 to 31/01/2025
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks consent for modifications to the approved mixed-use development authorised under REV2021/0034. These modifications relate predominantly to improving amenity for the occupants of the building, to ensure compliance with relevant Australian Standards, to satisfy engineering requirements, or modify the development so that it is brought into conformity with conditions of consent.

The application is referred to the Development Determination Panel (DDP) due to the application receiving at least five submissions by way of objection.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. Six submissions were received. Concerns raised in the objections predominantly relate to traffic and safety issues, the need for the modified proposal to be assessed as a new development application, and the acoustic impacts associated with the six proposed air conditioning condensers on the roof of the development.

The proposed modifications result in variations to some of the built form controls under the Pittwater 21 Development Control Plan (P21DCP), these being the southern side building line under Section D12.6 and the front building line to Whale Beach Road under Section D12.5. The proposal as modified, in regard to these variations, does not result in unacceptable environmental and/or amenity impacts, with the development achieving the relevant objectives of these controls.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that on balance the proposal as modified 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 grant approval the modification application, subject to recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

This modification application consists of 58 amendments to the approved development under REV2021/0034. Of these, 16 are design related changes improving amenity for the occupants of the building, while the remaining changes are necessitated to ensure compliance with relevant Australian Standards, to satisfy engineering requirements, or to comply with conditions of consent.

The modifications are broadly summarised as follows:

- Relocation of lifts, stairs and air conditioning condensers, including six AC units within the service area on the roof
- Adjustment of overland flow path
- Adjustment of footpath/parking bays
- New storeroom to basement, ground and level 1 at the north-western corner
- Changes to window sizes and doors
- Provision of privacy screening to Apartment 3 and 4 terraces
- Reconfiguration of sprinkler pump room and addition of underground sprinkler pump tank
- Internal reconfiguration of apartment layouts
- Extension of area of excavation adjacent to the Apartment 1 bedrooms east to the point where the excavated level meets existing ground level
- The planter boxes to the southern elevation of the terrace to Apartment 3 and 4 have been continued along the entire length of the terrace
- Reconfiguration of substation
- Widened garage door

The proposal involves additional excavation. The area of Retail 1 has also increased to 197m² from 188m² and the area of Retail 2 has decreased to 62m² from 78m². The area of Retail 3 remains the same at 33m².

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 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
 Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy
 Pittwater 21 Development Control Plan - C1.25 Plant, Equipment Boxes and Lift Over-Run
 Pittwater 21 Development Control Plan - C2.22 Plant, Equipment Boxes and Lift Over-Run
 Pittwater 21 Development Control Plan - D12.5 Front building line
 Pittwater 21 Development Control Plan - D12.6 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot B DP 316404 , 231 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment which has dual frontage to Whale Beach Road to the west and Surf Road to the north-east. The site is irregularly shaped, with a 30.275m wide frontage to Whale Beach Road, a 20.175m wide frontage to Surf Road and a total area of 844.7m². The site currently contains a multi-level mixed-use development, with retail and business premises fronting Whale Beach Road and residential development fronting Surf Road. A double carport is located at the south-east corner of the site, with access to/from Surf Road. A single garage is located in the northwest corner of the site, with access to Whale Beach Road. The current buildings and a number of retaining walls are in a state of disrepair. The site does not contain any significant landscaping or natural features. The site experiences a steep fall of 12.62m from the north-west corner of the site down to the south-east corner of the site, with a slope of approximately 30%. An overland flow path runs along the southern side boundary of the site (and the northern boundary of the site to the south). Whale Beach Road is a two-lane local road. The portion of the public road reserve immediately adjacent to the site is paved and currently features outdoor furniture and movable landscaping elements associated with an outdoor dining licence. A significant street tree is located within the road reserve. Time restricted parking is available along the frontage of the site, inclusive of a mail zone. Surf Road is a two-lane local road that connects Whale Beach Road to the beach car park. The public road reserve immediately adjacent to the site is nominal, and contains retaining walls associated with the existing building at the site. The site is zoned E1 Local Centre under the Pittwater Local Environmental Plan 2014 and is surrounded by land zoned C4

Environmental Living. With the exception of Whale Beach Surf Life Saving Club (two properties to the south), the area is characterised by dwelling houses.

Map:



SITE HISTORY

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

DA2020/0442

Development Application for demolition works and construction of a mixed use development comprising shop top housing and retail premises, with associated carparking, landscaping and strata subdivision.
Refused by Northern Beaches Local Planning Panel on 2 December 2020

REV2021/0034

Review of Determination of Application DA2020/0442 for demolition works and construction of a mixed use development comprising shop top housing and retail premises, with associated carparking, landscaping and strata subdivision.
Approved by Northern Beaches Local Planning Panel on 1 December 2021

MOD2021/0987

s4.55(1) Modification of Development Consent REV2021/0034 granted for demolition works and construction of a mixed use development comprising shop top housing and retail premises, with associated carparking, landscaping and strata subdivision.
Approved 27 January 2022

MOD2021/0983

Modification of Development Consent REV2021/0034 granted for demolition works and construction of a mixed use development comprising shop top housing and retail premises, with associated carparking, landscaping and strata subdivision.
Application sought modification of Condition 99 to allow an increase in patron numbers to the restaurant within Retail 1 located on the ground floor level fronting Surf Road.
Refused by Northern Beaches Local Planning Panel on 3 August 2022
Class 1 appeal filed on 4 November 2022
Approved by the Land and Environment Court on 11 April 2024

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for REV2021/0034, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under REV2021/0034 for the following reasons: • The proposal as modified will maintain the form and function of the approved development. • The proposed modifications will not materially alter the external appearance of the building, including its bulk and scale. • The proposed modifications relate predominantly to improving amenity for the occupants of the building, to ensure compliance with relevant Australian Standards, to satisfy engineering requirements, or to comply with conditions of consent. • The proposed modifications do not increase the approved building height. • Subject to compliance with conditions, the proposed modifications will have no adverse additional impact on the natural environment nor hazards which affect the site. • The proposed modifications will not result in any unreasonable additional impacts on surrounding properties or the public domain, including any overshadowing and overlooking impacts.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed	Development Application REV2021/0034 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<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 documentation has been submitted. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested on 7 March 2025 in relation to traffic engineering matters. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>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 not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 17/01/2025 to 31/01/2025 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 6 submission/s from:

Name:	Address:
Mr Jeremy Wade Cleaver	206 Whale Beach Road WHALE BEACH NSW 2107
Mrs Virginia Lizelle Stack	202 Whale Beach Road WHALE BEACH NSW 2107
Mr Catherine Naito	229 Whale Beach Road WHALE BEACH NSW 2107
Steven Craig Smith	233 Whale Beach Road WHALE BEACH NSW 2107
Friends Of Whale Beach	Address Unknown
Mr Van Vien Luong	200 Whale Beach Road WHALE BEACH NSW 2107

The issues raised within the submissions are summarised and addressed as follows:

- **Extent of modifications made**

The submissions raised concerns that the plans proposed under this application are substantially different to the approved development as a result of incremental modifications. It was suggested that this be treated as a new development application as the amendments relate to material changes and the development as modified is now too far from the original development.

Comment:

The modifications relate predominantly to improving amenity for the occupants of the building, to ensure compliance with relevant Australian Standards, to satisfy engineering requirements, or to comply with conditions of consent. The proposed development as modified is considered to be substantially the same development as that approved and therefore the changes proposed do not necessitate a new DA.

- **Air conditioning units**

The submissions raised concerns that the air conditioning condensers proposed on the roof will impact on acoustic and visual privacy for adjoining neighbours.

Comment:

The project's mechanical engineer was unable to design a system that worked effectively with all of the air conditioning condensers located in the basement due to the cumulative heat load. As such, six air conditioning condensers have been located within the service area on the roof and aluminium framed ventilation screens have been integrated into the walls of the service area. Condition 96 of REV2021/0034 requires noise from all plant equipment including roof top mechanical plant rooms/equipment, mechanical ventilation for car parks or commercial premises, extraction units and exhaust fans, air conditioning units and any motors of other equipment associated with the building to not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within the complex and surrounding premises including when doors and windows to those rooms are open. Condition 73 also requires the acoustic engineer to certify that noise level emissions from external plant meet the required noise levels prior to the issue of any occupation certificate. These conditions are to be retained as part of this modification application. The height of the proposed mechanical plant to the rooftop is unchanged from the approved DA. A condition has also been included within this consent requiring an acoustic engineer to review the chosen location for any external noise sources such as air

conditioning units and provide appropriate design/acoustic treatment advice to be implemented into the construction.

- **Use of a fixed crane**

The submissions raised concerns over the use of a fixed crane during construction of the development and suggested that a mobile crane would be more appropriate and less likely to negatively impact the community.

Comment:

The type of crane used during construction is a separate matter to this modification application. It is noted that the Applicant will need to submit a Crane Airspace Approval application to operate the crane. If any part of the crane is proposed to overhang, lift, swing, vane, luff or slew over private land, the Applicant will need to obtain their own Access Agreement (written approval) with each affected landowner over which the device will operate or swing over. Council does not play a role in obtaining these agreements affecting private land. A copy of the Access Agreement(s) from each affected landowner will need to be submitted before a Crane Airspace Permit can be issued. Any concerns or requirements raised by the affected party must be resolved or accommodated prior to use of the crane. In this way, the Applicant would be unable to obtain a Crane Airspace Permit for crane usage over private land if the owner of that land has not consented to it. It is noted that this issue is otherwise unrelated to the modification application.

- **Overland flow path**

The submissions raised concerns over the reduction in the width of the overland flow path from 1m to 0.6m and that it will not be adequate, resulting in water pouring over to the neighbouring property. Concern is also raised over the impacts of this change on the health of the neighbouring hibiscus tree to the south.

Comment:

The changes to the overland flow path have been assessed by Council's Development Engineer, who is satisfied that the width of the overland flow path is consistent with the design plans submitted by the Civil Engineer and is acceptable (refer Figures 1 and 2 below). The overland flow path was adjusted in width to comply with Condition 19 of consent REV2021/0034, requiring the width of the overland flow path to be reduced from 1m to 0.6m, and the setback between the overland flow path and the southern elevation to be increased by 0.4m. Condition 26 also requires the perimeter walls of the overland flow path to be watertight to ensure no flows enter the site or adjoining property. As such, Council's Development Engineer has advised that the modified design will be less likely to result in overland flows onto the neighbouring property than the previous design. The Project Architect confirmed that the levels of the overland flow path have not changed. Council's Landscape Officer has reviewed the modified plans with respect to the neighbouring tree in question and advised that the impact to the southern neighbouring trees were assessed by the Arborist at the boundary line in 2021 and therefore no further impact is foreseen. Condition 36 has been amended as part of this consent to require the Project Arborist to supervise the construction of the overland flow path along the southern boundary, including any associated retaining walls, within the tree protection zones of any neighbouring trees. It is noted that the Arboricultural Assessment approved as part of the original application stated that the location of concrete footings for the overland flow path wall will need to allow for the low likelihood that woody roots are encountered and that an arboriculturist will need to supervise these works. The recommendations of the original Arboricultural Assessment shall remain in place and be adhered to.

Figure 1: Overland flow path as approved

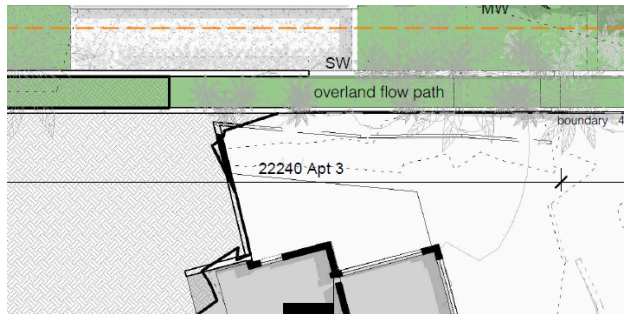
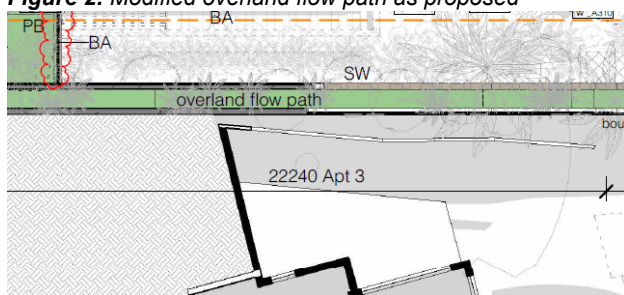


Figure 2: Modified overland flow path as proposed



- **Footpath/parking bay**

The submissions raised concerns that the change to the footpath/parking bays forces pedestrians further towards traffic on Surf Road, increasing the likelihood of an accident. The submissions note that the Loading Zone should remain where it was originally approved just east of the driveway, and that placing it on the west of the driveway would obstruct the line of sight of drivers coming down Surf Road.

Comment:

The footpath has been adjusted slightly to accommodate parking bay lengths that are compliant with Australian Standards; the changes do not force pedestrians further towards Surf Road, but rather improve safety by increasing the width of the footpath at the bend, as evident in Figures 3 and 4 below. The loading bay as approved has not changed and has always been located west of the driveway.

Figure 3: Approved Basement Plan

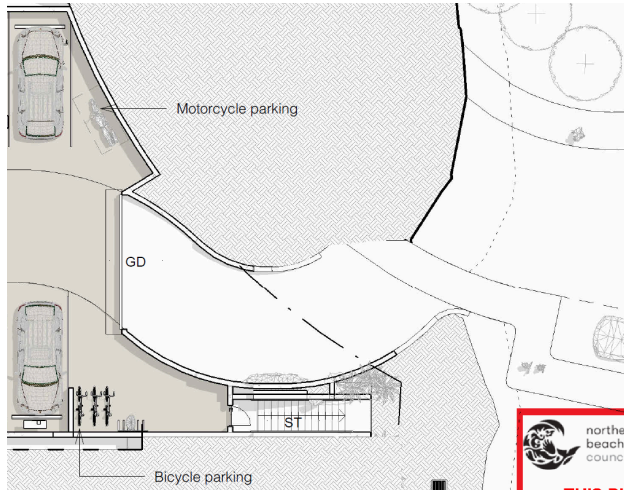
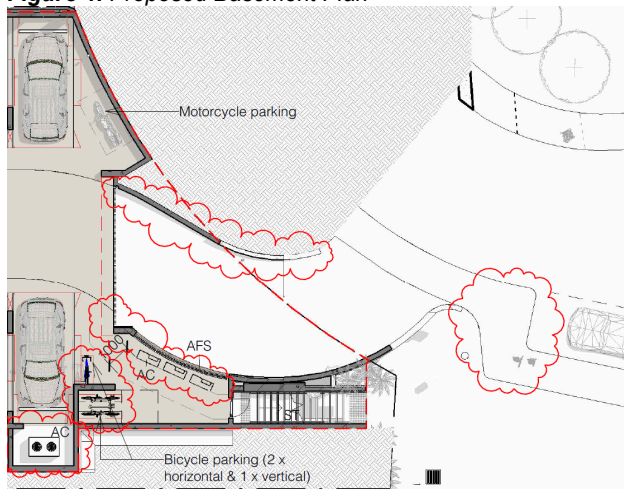


Figure 4: Proposed Basement Plan



- **Changed building footprint**

The submissions raised concerns that the whole building has been pushed closer to the southern boundary at the eastern side, further spoiling the enjoyment of the neighbouring property.

Comment:

The setback of the building to the southern boundary is generally the same as approved in relation to the residential units. However, minor additions to the building have brought some components closer to the southern boundary - the inclusion of the AC at the basement, and lift and stairs to the outdoor seating area at the ground floor to comply with access and mobility design standards. These changes are not considered to have adverse amenity impacts due to the changes being below the existing ground level (refer Figure 5 and 6) and these components not directly interfacing the neighboring dwelling. The new sprinkler pump tank is entirely below ground and required for fire services. The area above the tank on Level 3 has replaced an entirely paved area to the boundary with a garden bed to the boundary, thereby softening the built form of the building.

Figure 5: Approved southern elevation at boundary

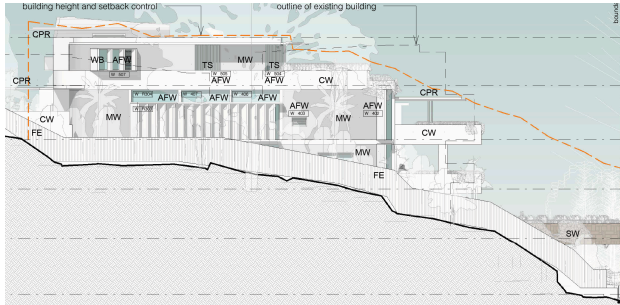


Figure 6: Proposed southern elevation at boundary



- **Reduced parking**

The submissions raised concerns over the Retail 1 space being given additional space by removing the two ground floor parking spaces where public parking is a genuine problem.

Comment:

The Retail 1 space has only been changed due to a reconfigured Fire Sprinkler Pump Room, with changes required by the fire engineer. The area of Retail 1 has increased to 197m² from 188m² and the area of Retail 2 has decreased to 62m² from 78m². The area of Retail 3 remains the same at 33m². As per the new area, the total number of car parking spaces required for Retail 1 is 7 spaces (previously required 6 spaces) and the total spaces required for Retail 2 is 2 spaces (previously required 3 spaces). Therefore, the proposed changes in the area of Retail shops do not affect the car parking requirements. Notwithstanding, the proposed development as modified does not seek to remove parking spaces; the basement has always accommodated 14 parking spaces, including one disability space, and the parking bay area at the front of the development has always accommodated 4 spaces. It is also important to note that Condition 98 of REV2021/0034 requires the development to maintain the following parking allocation for the life of the development:

- 10 x residential parking spaces, with 2 spaces per unit,
- 1 x disabled visitor space
- 3 x retail parking spaces

- **Excavation**

The submissions raised concerns that the area that was previously landscaped by a planter bed will now be excavated, pushed closer to the southern boundary and made into an occupied area, further interfering with the amenity, privacy and enjoyment of the neighbouring property to the south.

Comment:

Condition 19 of REV2021/0034 required that the proposed area of excavation adjacent to the bedrooms

of Apartment 1 be continued through to the east, extending to the point where the proposed excavated level meets existing ground level. As such, the modifications have been made to comply with the imposed condition of consent. As evident from Figure 6 above, the changes are below existing ground level and would have a minimal amenity impact on the neighbouring property to the south.

- **Changes to windows**

The submissions raised concerns that the sill levels of window W A103, A104 and A105 have been lowered to ground level and a new paved area looks directly into the garden of the neighbouring dwelling to the south. Concern was also raised over the new outdoor area off the laundry to Apartment 3.

Comment:

The top of windows A103-105 sit well below the natural ground level and are between 3.2m and 3.8m below the level of the top of the adjacent southern boundary fence. As such, there would be no overlooking facilitated from these windows to the neighbouring property, as evident from Figure 6 above. Windows A303 and A304 to the rumpus room and laundry have a sill height of 1.7m and the top of the windows sit approximately 1.0m below the level of the top of the adjacent southern boundary fence. This area is therefore not visible from the neighbouring property due to the level differences as evident in Figure 6. The changes to these bedroom windows facilitates level access to landscaped areas, a clothesline and private open space and provide increased cross ventilation and natural light.

- **Removal of bathroom to Retail 3**

The submissions raised concerns that the removal of the bathroom in Retail 3 will limit the potential uses for Retail 3, which will in turn reduce the number of local businesses that will have the opportunity to make use of Retail 3.

Comment:

The layout of Level 3 has simply been reconfigured such that a bathroom is still provided off the entryway via the lobby. In this way, there is a larger usable retail floor area, while still allowing users of both Retail 2 and Retail 3 to have access to a bathroom.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	Supported, without additional conditions General Comments Existing conditions to remain. Recommendation APPROVAL - no conditions
Environmental Health (Food Premises, Skin Pen.)	Supported, without additional conditions General Comments Existing conditions to remain Recommendation

Internal Referral Body	Comments
	APPROVAL - no conditions
Landscape Officer	<i>Supported, subject to conditions</i> The application is for modification to development consent REV2021/0034. <u>Further Information 10/04/25:</u> Upon a detailed review of the original Arboricultural Impact Assessment (AIA) by Urban Forestry Australia (dated July 2021) it is noted this report remains relevant to the protection of the neighbouring trees (which were supported for retention) and as such will need to remain included in the approved plans and supporting documentation. The impact to the southern neighbouring trees were assessed by the Arborist at the boundary line therefore no further impact is foreseen compared with approved REV2021/0034. The recommendations <i>"The boundary wall should be designed to avoid any conflict between tree roots and the location of the wall in the event roots greater than 30mm diameter are encountered during the PA's supervision. The PA is to assist with any redesign, ensuring the efficacy of the overland flow path is not compromised"</i> and <i>"The PA or other AQF5 arborist is to directly supervise excavation for a minimum 6m radius of the tree and ensure initial excavation to a depth of 700mm is undertaken using hand tools..."</i> outlined by Urban Forestry Australia (July 2021) shall be adhered to. It is noted a new AIA report has been provided in the modification application confirming retention of the neighbouring trees. All recommendations, in both Arboricultural Impact Assessments, shall be adopted by the Project Arborist to ensure protection of neighbouring trees. The Project Arborist condition shall be updated to include both reports to ensure tree protection measures are adopted for all trees and there is no confusion as to which report remains relevant. Note to planner: • Conditions amended - 36 Project Arborist, 44 Protection of Existing Street Trees, 45 - Tree and Vegetation Protection, and 63 Landscape Completion, • Conditions deleted - 62 Required Planting. <u>Additional Comment 09/04/25:</u> Landscape referral has been made aware of section 5 drawing CW1.02 by Barrenjoey Consulting Engineers revision 2 dated 22/02/24 which shows a significant design change for the overland flow path along the southern boundary approved under REV2021/0034. As shown in section 5, the new overland flow path design will require excavation along the southern boundary and the Arborist will need to provide comment on this with regard to the impact to neighbouring trees, which must be retained and protected. The Arboricultural Impact Assessment outlines the plans used for assessment under section 1.1.5 and the new overland flow path design has not been reviewed by the Arborist. <u>Additional Comment 31/03/25:</u> Condition 36 Project Arborist is amended to ensure the protection of neighbouring vegetation.

Internal Referral Body	Comments
	<i>Original Comment:</i> The updated Arboricultural Impact Assessment states "There are no trees on site and none of the documented trees will be directly affected by either the currently approved or currently proposed Section 4.55 application to modify this" and as such no concerns are raised with the proposed modifications in regard to trees. Condition 36 Project Arborist shall be amended as part of this modification application. The landscape outcomes approved under REV2021/0034 generally remain as approved noting some reconfiguration of landscaped areas. Condition 62 Required Planting shall be deleted as part of this modification application and condition 63 Landscape Completion shall be amended as part of this modification application. All other conditions remain. All public domain works shall be approved under the relevant pathway and in accordance with the imposed conditions.
NECC (Coast and Catchments)	Supported, subject to conditions The proposed modifications are extensive in nature and additional conditions from the coastal perspective have been added. Other than that, the proposal remains supported.
NECC (Development Engineering)	Supported, without additional conditions The proposed modifications include a minor change to the overland flow path within the footpath to accommodate the electrical kiosk which is acceptable. The width of the overland flow path is consistent with the design plans submitted by the Civil Engineer. The minor amendments to the footpath and driveway access are acceptable. The letter from the Geotechnical Engineer satisfies the requirements of the DCP. Development Engineering supports the proposed modification with no additional or modified conditions of consent recommended.
NECC (Flooding)	Supported, without additional conditions The proposal is for modification of existing Development Consent REV2021/0034, granted for Review of Determination of Application DA2020/0442. The proposal includes additional excavation, an increase in floor area, revised landscape design, reconfiguration of the internal layout. The proposal is located outside of the Medium Flood Risk Precinct and as such is not subject to any flood related development controls. The proposal generally complies with Section B3.11 of the Pittwater DCP and with Clause 5.21 of the Pittwater LEP.

Internal Referral Body	Comments
Parks, reserves, beaches, foreshore	Supported, without additional conditions The application proposes modification to development consent REV2021/0034. Parks, Reserves and Foreshores raise no concerns. All conditions imposed in REV2021/0034 remain.
Strategic and Place Planning (Urban Design)	Supported, without additional conditions This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment. The application seeks consent to modify the existing consent REV2021/0034. The proposed modifications result in a built form that is substantially the same development as that for which consent was originally granted. Urban Design raises no objection to the proposed development. Please note: Regarding any view impacts and any impacts on solar amenity and overshadowing, these matters will be dealt with under the evaluation of Council Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Council Heritage Officer, and any Landscape non-compliances will be dealt with under the evaluation of Council Landscape Officer.
Traffic Engineer	Supported, subject to conditions Additional comments - 26/3/2025: The applicant's response (dated 25 March 2025) to Council's request for further information and the accompanying revised plans has been reviewed. The response to the request for further information has highlighted that the consent granted for Rev2021/0034 has required the provision of the loading bay and indented parking bays and that the changes requested in the initial traffic referral comments (dated 5 March 2025) do not relate to the works proposed under the modification. On this basis the traffic team no longer wishes to press the request for a change to the location of the loading bay and for the additional indented parking bays on the west side of The Strand. It is noted that condition 21 of the consent for Rev2021/0034 requires the submission of plans for a Roads Act approval for works including the indented service bay and parking bays on Surf Road. Any sightline and road safety issues associated with the works on the road reserve would be considered in conjunction with the required Local Traffic Committee approvals for these changes when the Roads Act approval plans are under review. It is noted that revised details for the bicycle parking have been made on the amended plans. On the basis of the above comments there are no traffic engineering issues with approval of the modification subject to existing condition No.15 being amended as outlined below with all other traffic engineering conditions relating to Rev2021/0034 remaining in place. An additional condition relating to pedestrian sightlines is also recommended Original comments - 5/3/2025:

Internal Referral Body	Comments
	Proposal Description: Modification of Development Consent REV2021/0034 granted for Review of Determination of Application DA2020/0442 for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision The traffic team has reviewed the following documents: - Plans - Master set, prepared by Richard Cole Architecture, dated May 2024 - Traffic Letter prepared by TEF Consulting, dated 28 September 2024. - Statement of Environmental Effects (SEE) report, prepared by SJB Planning, dated 10 December 2024 (Ref: 0066). - Schedule of Amendments Report, prepared by Richard Cole Architecture, dated 6 December 2024 Comments - The proposal is for a modification to the approved consent including but not limited to minor increase in floor area, revised landscape design etc. The SEE report mentions that there are 58 amendments in the proposal, of which 16 are design amendments and the rest are design changes as required by the conditions of consent in REV2021/0034. - It is understood that the area of Retail 1 is increased to 197 sqm from 188 sqm and area of retail 2 is decreased to 62 sqm from 78 sqm. The area of Retail 3 remains the same as 33 sqm. As per the new area, the total number of car parking spaces required for retail 1 is 7 spaces (previously required 6 spaces) and total spaces required for Retail 2 is 2 spaces (previously required 3 spaces). Therefore, the proposed changes in the area of Retail shops do not affect in the car parking requirements. - It is noted that there is a wall proposed next to the bicycle parking spaces, as the bicycle bay rails have not been shown on the plans and the area is not dimensioned it is unclear how the wall will impact the parking of bicycles. The previously approved 3 bicycle parking spaces must be shown in the plans and demonstrated to have been designed in accordance with AS2890.3:2015. - It is noted that a traffic letter has been provided. The traffic letter states that the amended plans and amended design of the car parking areas meet the requirements of AS 2890.1, AS2890.6. The traffic letter contains swept path analysis demonstrating satisfactory access to/from critically located off-street parking spaces for a B85 vehicle with swept path analysis also provided for egress from the driveway by a B99 vehicle. It is noted that the B99 vehicle egressing the driveway encroaches on the wrong side of the Surf Road and concern is raised regarding the safety of this manoeuvre particularly if the proposed service bay is occupied by a delivery truck. Drivers proceeding down Surf Road would, under such circumstances be unable to see the egressing vehicle and a collision may occur. The service bay should therefore be deleted from its current location and shifted to the east of the driveway where the sightline impacts will be less significant. The footpath should be extended to the west throughout the length of the current service bay, terminating at the western end of the current service bay. The indented parking bay should therefore be reconfigured to provide for a service bay catering for an 8.8m MRV and two car parking spaces. In

Internal Referral Body	Comments
	conjunction with this redesign the 90 degree dog leg in the footpath east of the driveway should be smoothed to provide a 45 degree angled transition for enhanced pedestrian access and to facilitate ease of access to/from the service bay. Finally, formalisation of parallel parking on the west side of The Strand south of Surf Road to provide for 3 x indented parking bays is also required to offset the loss of the two parallel parking bays from Surf Road. These spaces should be paved and kerb and guttered. Dimensions for all of the proposed indented parking bays including the service bay will be required to confirm that all spaces are sized in consistency with AS2890.5:2020 and AS2890.2. In addition, swept path plots will also be required to confirm independent ingress and egress from the service bay by a MRV with the adjacent parking bay occupied. • A ground clearance/headroom clearance check has also been provided confirming by the applicant's traffic consultant confirming that access is feasible for a B99 vehicle to the off-street parking area. • A swept path clearance check for a Medium Rigid Vehicle and a B99 vehicle turning around the proposed indented parking bays on Surf Road has been provided. However, concern is raised about the close proximity of the indent to The Strand, The changes outlined above should shift the eastern end of the indent slightly further to the west which would be a more satisfactory outcome. Conclusion While the proposed modifications to the approved DA (REV2021/0034) are not opposed as outlined above additional details are required to enable the modified plans to be supported by the traffic team.
Waste Officer	Supported, subject to conditions Supported with conditions as imposed per Consent Annexure B to Judgement - Consolidated Conditions for MOD 2021/0983 Construction Management Plan dated February 2020, Waste Management Plan dated 23/4/2020 and updated plans registered 6/12/2024

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPPs), 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 LEPPs), 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

2.1 Standards for BASIX development and BASIX optional development

A BASIX certificate has been submitted with the application (see Certificate No. 1048605M_06 dated 9 December 2024).

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

3.1 Application of Chapter

- (1) This Chapter applies to development, other than development for the purposes of residential accommodation, that involves—
 - (a) *the erection of a new building \$5 million, or*
 - (b) *alterations, enlargement or extension of an existing building, if the development has a capital investment value of \$10 million or more.*

Comment: This chapter is not applicable as the development other than for the purpose of residential accommodation does not involve the erection of a new building with an estimated development cost of \$5 million or more, or alterations, enlargement or extension of an existing building with a capital investment value of \$10 million or more.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

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

Comment:

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

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

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

Comment:

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

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

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

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or other land,
 - ii) and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

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

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

Comment:

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

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The site is identified within the 'coastal use area'; however, development consent has already been granted to development on the land. The proposed modifications have been supported by Council's Coastal Officer. The proposal is therefore considered to comply with the requirements of this clause.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposal as modified has been supported by Council's Coastal Officer. It can therefore be satisfied that the proposed development as modified is not likely to cause increased risk of coastal hazards on the land or other land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

No certified coastal management program applies to the land.

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential and commercial 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 and retail 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

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	8.5m	8.5m	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control PlanBuilt Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	Whale Beach Road: 3.5m	3.5m	0.3m (sprinkler pump tank)	No
	Surf Road: 3.5m	Nil	Unaltered	Yes
Side building line	North: 3.0m	<u>Basement</u> : Nil - 4.5m <u>Ground</u> : 1.2m - 4.5m <u>Levels 1-3</u> : 4.0m <u>Level 4</u> : 4.6m	<u>Basement</u> : Nil - 4.0m <u>Ground</u> : Nil - 4.0m (nil as approved) <u>Levels 1-3</u> : Nil - 4.0m (as approved) <u>Level 4</u> : 4.0m (as approved)	Yes
	South: 3.0m	<u>Basement</u> : 2.5m <u>Ground</u> : 2.5m <u>Levels 1-3</u> : 4.0m <u>Level 4</u> : 4.6m	<u>Basement</u> : 0.7m - 2.5m <u>Ground</u> : 0.8m - 2.5m <u>Levels 1-3</u> : 3.2m - 4.0m (as approved) <u>Level 4</u> : 4.0m (as approved)	No
Retail percentage	Min. 25% of GFA (338.5m ²)	24.5% (332.4m ²)	25.5% (317m ²)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B2.6 Dwelling Density and Subdivision - Shop Top Housing	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	No	Yes
C2 Design Criteria for Business Development	Yes	Yes
C2.1 Landscaping	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.3 Awnings	Yes	Yes
C2.5 View Sharing	Yes	Yes
C2.6 Adaptable Housing and Accessibility	Yes	Yes
C2.7 Building Facades	Yes	Yes
C2.8 Energy and Water Conservation	Yes	Yes
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.21 Food Premises Design Standards	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	No	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

The area of Retail 1 has increased to 197m² from 188m² and the area of Retail 2 has reduced to 62m² from 78m². The area of Retail 3 remains the same at 33m². Parking is to be provided at a rate of 1 space per 30m² of Gross Lettable Area. As such, the total number of car parking spaces required for Retail 1 is 7 spaces (previously required 6 spaces) and the total spaces required for Retail 2 is 2 spaces (previously required 3 spaces). Therefore, the proposed changes in the area of retail shops do not affect the car parking requirement of 10 spaces for the retail premises. Additionally, the number of residential units has not changed. There is no change to the approved 14 parking spaces provided within the basement level.

C1.6 Acoustic Privacy

Section C1.6 of the Pittwater 21 Development Control Plan requires noise generating plants including pool/spa motors, air conditioning units and the like to not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

A condition to this effect was included as part of REV2021/0034 and is to be retained to ensure the proposed air conditioning units do not produce an unreasonable level of noise.

C1.25 Plant, Equipment Boxes and Lift Over-Run

Description of non-compliance

Section C1.25 of the Pittwater 21 Development Control Plan stipulates that where provided, plant and equipment boxes, air conditioning units and lift over-runs are to be integrated internally into the design fabric of the built form of the building. Council does not encourage air conditioning units on the roof of residential flat buildings and multi dwelling housing. All noise generating equipment such as mechanical plant rooms, mechanical equipment, air conditioning units, mechanical ventilation from car parks, driveway entry shutters, garbage collection areas or similar, are to be located and designed to protect the acoustic privacy of workers, residents and neighbours. However, subject to achievement of the outcomes of this control, consideration may be given to the location of plant, equipment boxes and lift over-runs on the roof a building where it can be shown that there will not be a non-compliance with Council's built form controls including building height and building envelope. Where located on the roof any plant, equipment boxes and lift over-runs are to be adequately screened from view from adjoining properties and the public domain.

The project's mechanical engineer was unable to design a system that worked effectively with all of the air conditioning condensers located in the basement due to the cumulative heat load. As such, six air conditioning condensers have been located within the service area on the roof and aluminium framed ventilation screens have been integrated into the walls of the service area. However, these do not result in any built form non-compliances in relation to building height or envelope. The height of the proposed mechanical plant to the rooftop is unchanged from the approved DA.

Condition 96 of REV2021/0034 requires noise from all plant equipment including roof top mechanical plant rooms/equipment, mechanical ventilation for car parks or commercial premises, extraction units and exhaust fans, air conditioning units and any motors of other equipment associated with the building to not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within the complex and surrounding premises including when doors and windows to those rooms are open. Condition 73 also requires the acoustic engineer to certify that noise level emissions from external plant meet the required noise levels prior to the issue of any occupation certificate. These conditions are to be retained as part of this modification application. A condition has also been included within this consent requiring an acoustic engineer to review the chosen location for any external noise sources such as air conditioning units and provide appropriate design/acoustic treatment advice to be implemented into the construction.

It is important to note that Condition 00 of REV2021/0034 does not permit plant equipment on the roof or in a location that is visible from the public domain, apart from the flush-mounted solar panels and the plant equipment shown on the approved plans within the portion of the upper floor roof bound in copper sheeting.

On balance of the above, the location of air conditioning condensers on the roof is supported.

Merit consideration

With regard to the proposed variation, the development is considered against the underlying outcomes of the Control as follows:

- ***To achieve the desired future character of the Locality.***

Comment:

The proposal as modified will continue to achieve the desired future character of the locality by maintaining a building height limit below the tree canopy and minimising bulk and scale.

- *The bulk and scale of the built form is minimised.*

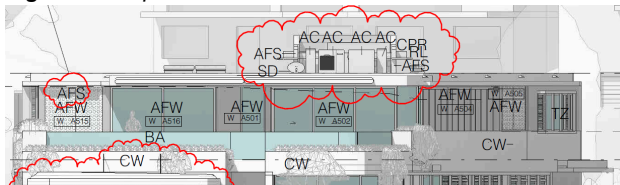
Comment:

The proposed roof top air conditioning units do not add significant bulk and scale to the approved development as they are contained within the screened area on the roof, as evident from Figures 7 and 8 below.

Figure 7: Approved eastern elevation



Figure 8: Proposed eastern elevation



- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

The proposed air conditioning units will not result in view loss impacts to and/or from public/private places as they are contained within the screened area on the roof, as evident from Figures 7 and 8 above.

- *To achieve reduction in visual clutter.*

Comment:

The proposed air conditioning units do not result in an unreasonable level of visual clutter.

- *The appropriate location and design of noise generating equipment.*

Comment:

While the proposed air conditioning units are not ideally located, the conditions included as part of the original application and this modification application will ensure an unreasonable noise level is not

produced.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

C2.22 Plant, Equipment Boxes and Lift Over-Run

Refer to discussion under Section C1.25 of this assessment report.

D12.5 Front building line

Detailed description of development

Pursuant to Section D12.5 of the Pittwater 21 Development Control Plan, on land zoned E1 Local Centre, built structures, other than driveways, fences and retaining walls shall have a minimum front building line of 3.5m. Rainwater tanks are permitted within the front building line provided that they do not exceed 1m in height above existing ground level (existing).

The proposed modifications include a sprinkler pump tank that is set back 0.3m from Whale Beach Road. It is important to note that the proposed sprinkler tank sits below existing ground level and is therefore not visible from the streetscape. The setback of the face of the development to Whale Beach Road remains unchanged. Refer Figures 9-11 below.

Figure 9: Approved Level 3 Plan

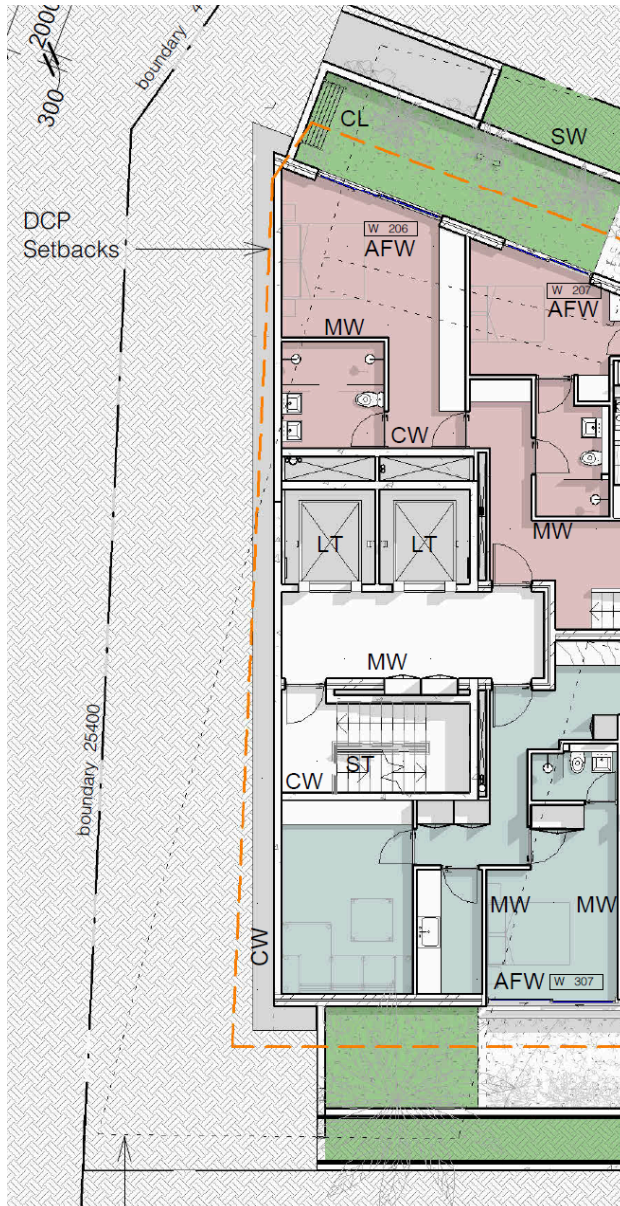


Figure 10: Proposed Level 3 Plan

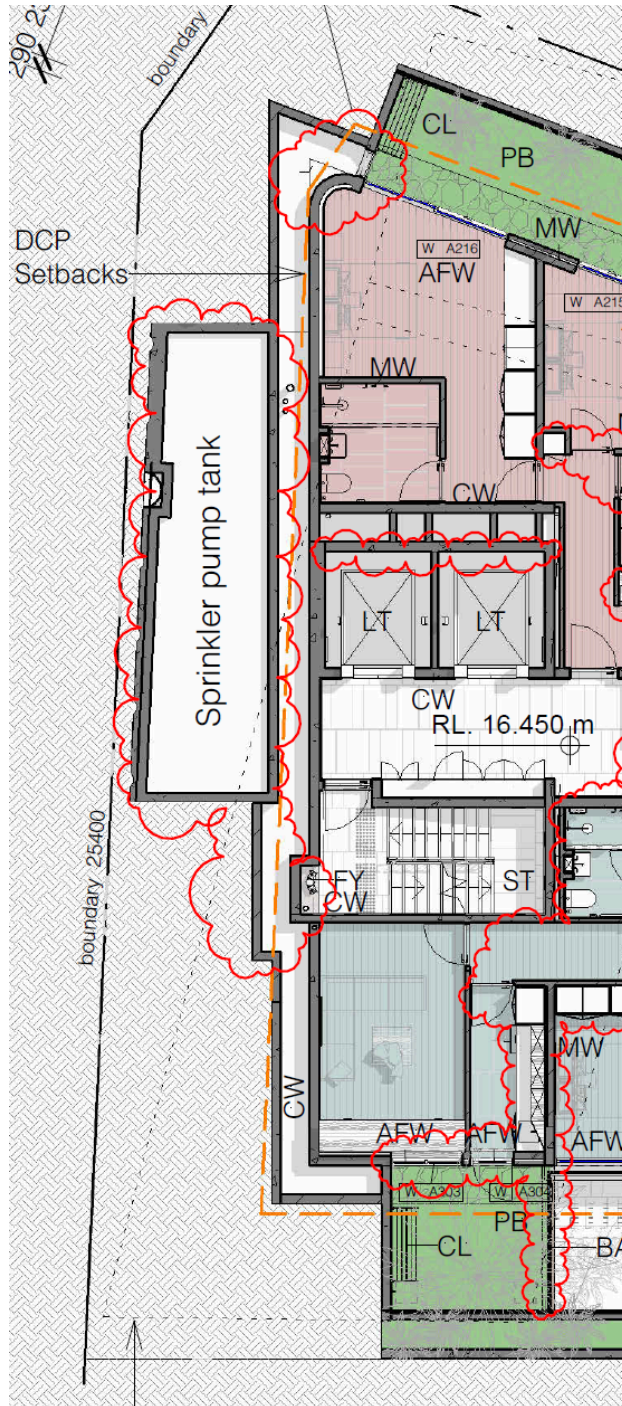
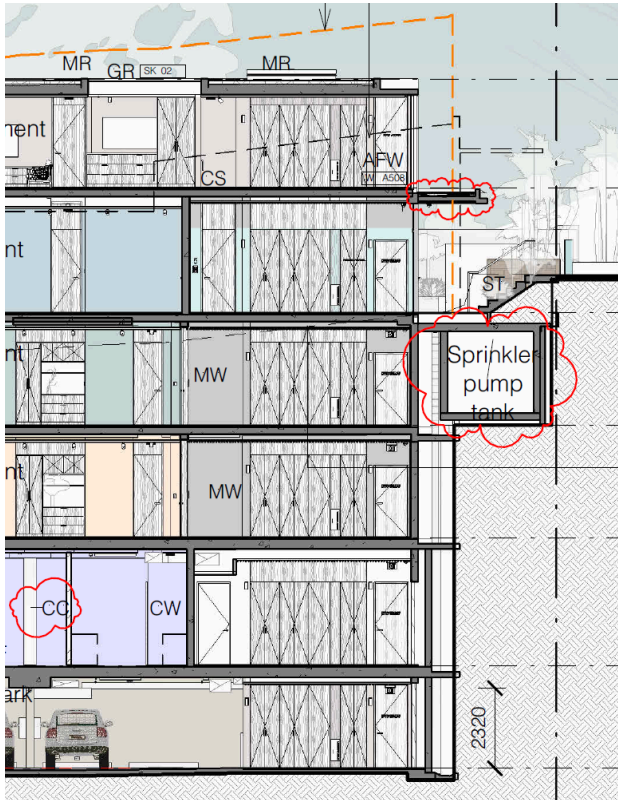


Figure 11: Proposed Section Plan



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 proposed development as modified will continue to achieve the desired future character of the locality by maintaining the stepped form of the development down the slope.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

Comment:

The proposed modifications will not result in additional view impacts.

- ***The amenity of residential development adjoining a main road is maintained.***

Comment:

The proposal has been designed to maintain amenity for the occupants of the dwelling.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment:

No trees are located on the site and therefore no trees are proposed to be removed as part of the development works. The proposed development includes provision of new plantings to visually reduce the built form.

- ***Vehicle manoeuvring in a forward direction is facilitated.***

Comment:

Vehicle manoeuvring in a forward direction is facilitated off Surf Road.

- ***To preserve and enhance the rural and bushland character of the locality.***

Comment:

The proposal does not involve the removal of any trees and provides for planting of several new canopy trees, shrubs and groundcovers in planters and around the perimeter of the development, thereby enhancing the 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 proposed development as modified enhances the existing streetscape along Whale Beach Road and is of a scale and density that is in keeping with the height of the natural environment, as evident in Figure 12 below.

Figure 12: 3D Perspective from Whale Beach Road



- ***To encourage attractive street frontages and improve pedestrian amenity.***

Comment:

The proposed development provides an attractive street frontage from Whale Beach Road and will improve pedestrian amenity by providing an active streetscape with retail premises at the street level.

- ***To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.***

Comment:

The proposed development sensitively relates to the spatial characteristics of the existing urban environment by stepping down the built form to follow the slope of the land and maintaining a two storey built form at the Whale Beach Road frontage, consistent with the scale of development along Whale Beach Road.

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

circumstance.

D12.6 Side and rear building line

Detailed description of non-compliance

Pursuant to Section D12.6 of the Pittwater 21 Development Control Plan, the minimum side and rear building line for built structures including parking structures, other than driveways, fences and retaining walls on land zoned E1 Local Centre is 3m.

The basement and ground levels were approved with a 2.5m setback to the southern side boundary. The proposal as modified has a minimum setback of 0.7m at the basement level and 0.8m at the ground level due to the inclusion of the air conditioner and lift to the outdoor seating area to comply with AS1428.1 Design for access and mobility, as evident in Figures 13 and 14 below. The remainder of the building maintains the approved setback of 2.5m from the southern boundary at the basement and ground floor levels.

Figure 13: Proposed Basement Plan

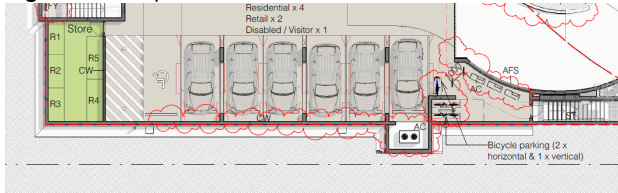
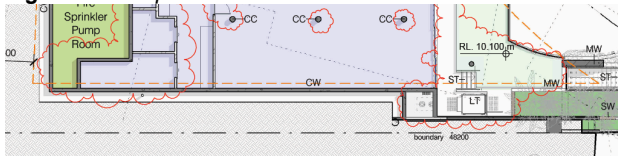
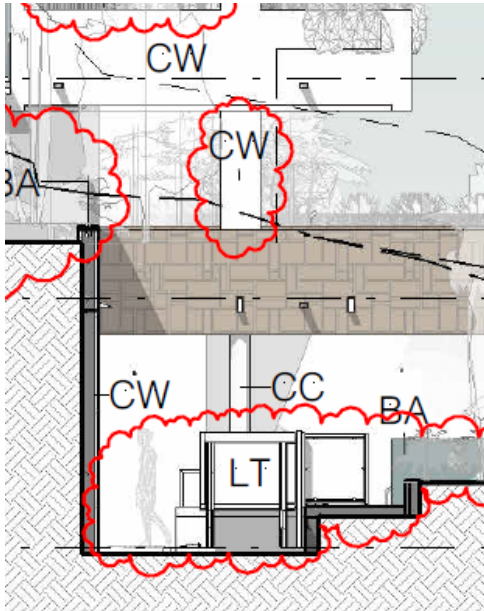


Figure 14: Proposed Ground Floor Plan



It is important to note that the ground floor sits approximately 5.3m below the existing ground level and 6.8m below the height of the fence, as evident in Figure 15 below. As such, these added components pose minimal amenity impacts for adjoining properties.

Figure 15: Section Plan



Merit consideration

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

- ***To achieve the desired future character of the Locality.***

Comment:

The proposed development as modified will continue to achieve the desired future character of the locality by maintaining the stepped form of the development down the slope.

- ***The bulk and scale of the built form is minimised.***

Comment:

The proposed modifications to the southern side building line do not add to the bulk and scale of the approved built form.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

Comment:

The proposed modifications will not result in additional view impacts.

- ***To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.***

Comment:

The proposed modifications will not result in additional view impacts.

- ***To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.***

Comment:

The proposal as modified ensures a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.

- ***Substantial landscaping, a mature tree canopy and an attractive streetscape.***

Comment:

The proposal as modified includes substantial landscaping and new plantings and will improve the attractiveness of the existing streetscapes along both Surf Road and Whale Beach Road.

- ***Flexibility in the siting of buildings and access.***

Comment:

Flexibility has been afforded in the siting of these new building components given their level below the existing ground line.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment:

No trees are located on the site and therefore no trees are proposed to be removed as part of the development works. The proposed development includes provision of new plantings to visually reduce the built form.

- ***To ensure a landscaped buffer between commercial and residential zones is established.***

Comment:

The proposal involves landscaping along the entire perimeter of the development to provide a landscaped buffer between commercial and residential zones.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;

- All relevant and draft Environmental Planning Instruments;
- 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 modification of the approved mixed-use development under REV2021/0034, has been referred to the Development Determination Panel (DDP) due to the application receiving at least five submissions by way of objection.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. Six submissions were received. Concerns raised in the objections predominantly relate to traffic and safety issues, the need for the modified proposal to be assessed as a new development application, and the acoustic impacts associated with the six proposed air conditioning condensers on the roof of the development.

The concerns raised in the objections have been addressed and resolved through merit assessments and the inclusion of additional recommended conditions of consent.

The modifications result in some built form non-compliance in relation to setbacks, which have been assessed in detail within this report.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0705 for Modification of Development Consent REV2021/0034 granted for Review of Determination of Application DA2020/0442 for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision on land at Lot B DP 316404, 231 Whale Beach Road, WHALE BEACH, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-496082 MOD2024/0705	The date of this notice of determination	Modification of Development Consent REV2021/0034 granted for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision. Modify Condition 1 - Approved Plans and supporting documentation Modify Condition 2 - Compliance with Other Department, Authority or Service Requirements Modify Condition 14 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans Modify Condition 15 - Car Parking Standards Modify Condition 19 - Amendments to the Approved Plans Add Condition 35A - Erosion and Sediment Control Plan Add Condition 35B - Pedestrian sight distance at property boundary Add Condition 35C - Acoustic Treatments Modify Condition 36 - Project Arborist Modify Condition 44 - Protection of Existing Street Trees Modify Condition 45 - Tree and Vegetation Protection Modify Condition 61 - Waste/Recycling Requirements (Waste Plan Submitted) Add Condition 61A - Stockpiling Materials Delete Condition 62 - Required Planting Modify Condition 63 - Landscape Completion Add Condition 89B - Pathway, access and door requirements to bin storage room Add Condition 89C - Screening of Air Conditioning Condensers
PAN-176524 MOD2021/0983	11 April 2024	Modification of Development Consent REV2021/0034 granted for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision. Modify Condition 1 - Approved Plans and supporting documentation Modify Condition 3 - Approved Land Use Modify Condition 67 - Signage and Linemarking - Implementation Modify Condition 80 - Kitchen Design, Construction and Fit-out of Food Premises Certification Add Condition 89A - Green Travel Plan Modify Condition 92 - Hours of Operation Modify Condition 99 - Capacity of Ground Level Cafe or Restaurant facing Surf Road Add Condition 99A - Acoustic Recommendations
PAN-180344 MOD2021/0987	27 January 2022	Modification of Development Consent REV2021/0034 granted for demolition works and construction of a Mixed Use Development

		comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision.
		Modify Condition 15 - Car Parking Standards Modify Condition 75 - Driveway and Parking Facility Work

Modified conditions**A. Modify Condition 1 - Approved Plans and supporting documentation, to read as follows:**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01 Site Plan, Revision OO	6 December 2024	Richard Cole Architecture
DA03 Basement Plan, Revision OO	6 December 2024	Richard Cole Architecture
DA04 Ground Floor Plan, Revision OO	6 December 2024	Richard Cole Architecture
DA05 Level 1 Plan, Revision OO	6 December 2024	Richard Cole Architecture
DA06 Level 2 Plan, Revision OO	6 December 2024	Richard Cole Architecture
DA07 Level 3 Plan, Revision OO	6 December 2024	Richard Cole Architecture
DA08 Level 4 Plan, Revision OO	6 December 2024	Richard Cole Architecture
DA09 Roof Plan, Revision OO	6 December 2024	Richard Cole Architecture
DA10 Elevations, Revision OO	6 December 2024	Richard Cole Architecture
DA11 Elevations, Revision OO	6 December 2024	Richard Cole Architecture
DA12 Boundary Elevations, Revision OO	6 December 2024	Richard Cole Architecture
DA13 Section, Revision OO	6 December 2024	Richard Cole Architecture
DA14 Section, Revision OO	6 December 2024	Richard Cole Architecture
DA35 Finishes Board - Surf Road, Revision OO	6 December 2024	Richard Cole Architecture
DA36 Finishes Board - Whale Beach Road, Revision OO	6 December 2024	Richard Cole Architecture

Engineering Plans		
Drawing No.	Dated	Prepared By
23058/07 Proposed Car Park Layout, Revision C	27 September 2024	TEF Consulting

SW2.00 Stormwater Infrastructure Works, Revision 05	21 November 2024	Barrenjoey Consulting Engineers
SW2.01 Stormwater Part Plans, Revision 04	9 October 2024	Barrenjoey Consulting Engineers
SW2.02 Longitudinal Sections, Revision 03	21 November 2024	Barrenjoey Consulting Engineers
SW2.03 Longitudinal Sections, Revision 04	21 November 2024	Barrenjoey Consulting Engineers
SW2.04 General Stormwater Infrastructure Details, Revision 02	22 February 2024	Barrenjoey Consulting Engineers
SW2.05 Stormwater Pit Details Sheet 2, Revision 02	22 February 2024	Barrenjoey Consulting Engineers
SW2.06 Stormwater Pit Details Sheet 3, Revision 02	22 February 2024	Barrenjoey Consulting Engineers
SW2.07 Stormwater Pit Details Sheet 4, Revision 02	22 February 2024	Barrenjoey Consulting Engineers
SW2.08 Stormwater Pit Details Sheet 5, Revision 02	22 February 2024	Barrenjoey Consulting Engineers
SW2.09 Stormwater Pit Details Sheet 6, Revision 03	9 October 2024	Barrenjoey Consulting Engineers
CW1.00 Public Domain Infrastructure Works Plan, Revision 04	9 October 2024	Barrenjoey Consulting Engineers
CW1.01 Infrastructure Works Part Plans, Revision 04	9 October 2024	Barrenjoey Consulting Engineers
CW1.02 Infrastructure Works Details Sheet 1, Revision 02	22 February 2024	Barrenjoey Consulting Engineers
CW1.03 Infrastructure Works Details Sheet 2, Revision 02	22 February 2024	Barrenjoey Consulting Engineers
CW1.04 Infrastructure Works Details Sheet 3, Revision 03	9 October 2024	Barrenjoey Consulting Engineers
CW1.05 Infrastructure Works Details Sheet 4, Revision 03	9 October 2024	Barrenjoey Consulting Engineers

Reports / Documentation - All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
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Access Report	14 May 2024	Accessible Building Solutions
Acoustic Report for Development Application, Revision E	28 September 2023	JHA Services
Acoustic Report, Revision B, Project No: 190351 only Part 5.1 - Roof top Mechanical Plan Recommendations	5 February 2020	JHA Services
Geotechnical Report; Project 45636.02, R.001.Rev0	3 November 2023	Douglas Partners Pty Ltd
Geotechnical Forms 1 and 1a	9 April 2025	Douglas Partners Pty Ltd
Geotechnical Statement; Project 45636.02, R.012.Rev2	11 April 2025	Douglas Partners Pty Ltd
Coastline Risk Management Report	7 October 2021	Cardno (NSW/ACT) Pty Ltd
Coastline Risk Management Form 1	7 October 2021	Cardno (NSW/ACT) Pty Ltd
Arboricultural Impact Assessment	July 2021	Urban Forestry Australia
Arboricultural Impact Assessment and Management Plan	July 2024	Botanics Tree Wise People Pty Ltd
BCA Design Compliance Report, Revision 03	21 August 2024	MBC Group
SCA Design Compliance Report	2 August 2021	Modern Building Certifiers
Stormwater Asset Relocation Investigation & Report, Revision A	October 2020	Barrenjoey Consulting Engineers Pty Ltd
Plan of Management	14 March 2024	SJB Planning
Construction Management Plan	February 2020	AusWide Consulting
BASIX Certificate - 1048605M_06	9 December 2024	Bonnefin Consulting Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
CC-L01A Landscape Site Plan	23 October 2024	Trish Dobson
CC-L02A Tree Retention Plan	23 October 2024	Trish Dobson
CC-L03A Public Domain Landscape Plan	23 October 2024	Trish Dobson
CC-L04A Perimeter Planting Plan	23 October 2024	Trish Dobson
CC-L05A Terrace Planters	23 October 2024	Trish Dobson
CC-L06A Planting Schedule + Specifications	23 October 2024	Trish Dobson
CC-L07A Landscape Details	23 October 2024	Trish Dobson

Waste Management Plan		
Drawing No. / Title	Dated	Prepared By
Waste Management Plan	23 April 2020	Diane Cassar and Leslie Cassar

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	16 January 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.

C. Modify Condition 14 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans, to read as follows:

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Douglas Partners dated 3 November 2023 (Project 45636.02; R.001.Rev0) 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 Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

D. Modify Condition 15 - Car Parking Standards, to read as follows:

The car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 – Parking facilities – Off-street car parking and AS/NZ 2890.3 2015. The driveway/access ramp grades and access must comply with Drawing 23058/07 Proposed Car Park Layout, Revision C dated 27 September 2024 prepared by TEF Consulting.

Details demonstrating compliance with this condition are to be submitted to the Certifying Authority prior to the issue of a construction certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of bicycles and vehicles.

E. Modify Condition 19 - Amendments to the Approved Plans, to read as follows:

The following amendments are to be made to the Approved Plans:

- Excavation: The proposed area of excavation adjacent to the bedrooms of Apartment 1 is to be continued through to the east, extending to the point where the proposed excavated level meets existing ground level.

- Overland flow path: The 1.0m wide overland flow path along the Southern Boundary is to be reduced in width to 0.6m. Conversely, the setback between the overland flow path and the southern elevation is to be increased by 0.4m.
- Apartment 3 terrace: The planter box proposed on the southern elevation of the terrace associated with Apartment 3 is to continue the entire length of the terrace. A fixed privacy screen to a height of 1.7m above the FFL of the terrace is to be incorporated on the inside edge of the planter, for a minimum distance of 3m measured from the eastern facade of the external wall. The privacy screen can be constructed of translucent glazing or aluminium screens (TS), of the same detail of those proposed on Level 4.
- Apartment 4 Terrace: The planter box proposed on the southern elevation of the terrace associated with Apartment 4 is to continue the entire length of the terrace. A fixed privacy screen to a height of 1.7m above the FFL of the terrace is to be incorporated on the inside edge of the planter, for a minimum distance of 3m measured from the eastern facade of the external wall. The privacy screen can be constructed of translucent glazing or aluminium screens (TS), of the same detail of those proposed on Level 4.
- Spa: The spa on the Level 4 terrace is to be deleted from the plans and is not authorised by this consent.

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

Reason: To ensure the development achieves appropriate internal amenity.

F. Add Condition 35A - Erosion and Sediment Control Plan, to read as follows:

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

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

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

G. Add Condition 35B - Pedestrian sight distance at property boundary, to read as follows:

A pedestrian sight triangle of 2.0m by 2.5m, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas.

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

Reason: To maintain pedestrian safety.

H. Add Condition 35C - Acoustic Treatments, to read as follows:

Prior to the issue of any Construction Certificate, an acoustic engineer is to review the chosen location for any

external noise sources such as air conditioning units and provide appropriate design/acoustic treatment advise to be implemented into the construction.

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

Reason: To ensure potential noise sources have been considered and effectively managed.

I. Modify Condition 36 - Project Arborist, to read as follows:

a) A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with the Arboricultural Impact Assessment dated July 2021 prepared by Urban Forestry Australia (and any relevant protection measures outlined in the Arboricultural Impact Assessment dated July 2024 prepared by George Palmer, Botanics P/L) and Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection and ground protection.

b) The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works unless approved by the Project Arborist. The Project Arborist shall supervise the construction of the overland flow path along the southern boundary, including any associated retaining walls, within the tree protection zones of any neighbouring trees and in accordance with the recommendations outlined in the Arboricultural Impact Assessment dated July 2021 prepared by Urban Forestry Australia (particularly sections 5.2.4 and 5.3).

c) Existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist.

d) All tree protection measures specified must:

- i) be in place before work commences on the site, and
- ii) be maintained in good condition during the construction period, and
- iii) remain in place for the duration of the construction works.

e) The Project Arborist shall provide certification to the Certifier that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded including at commencement, during the works and at completion.

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

J. Modify Condition 44 - Protection of Existing Street Trees, to read as follows:

a) all existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS 4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

b) 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.

K. Modify Condition 45 - Tree and Vegetation Protection, to read as follows:

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

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS 4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS 4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: be in place before work commences on the site, be maintained in good condition during the construction period, and remain in place for the duration of the construction works.

c) the Principal Certifier must ensure that:

- i) If activated, the arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

L. Modify Condition 61 - Waste/Recycling Requirements (Waste Plan Submitted), to read as follows:

During demolition and/or construction the proposal/works shall be generally consistent with the approved Waste Management Plan and Construction Management Plan referenced in Condition 1 of this consent.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

M. Add Condition 61A - Stockpiling Materials, to read as follows:

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

N. Delete Condition 62 - Required Planting - a) Trees shrubs and groundcovers shall be planted in accordance with the Site Planting Plan Dwg No. DA-L02C dated 9.8.21 and Planting Schedule Dwg No. DA-L07C 24.4.20 Prepared by Trish Dobson; b) Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Deleted.

O. Modify Condition 63 - Landscape Completion, to read as follows:

a) landscape works are to be implemented in accordance with the approved Landscape Plans (drawings CC-L03A, CC-L04A, CC-L05A, CC-L06A by Trish Dobson dated 23/10/24), and inclusive of the following conditions:

- i) landscape works are to be contained within the legal property boundaries,
- ii) planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,
- iii) all tree planting shall be planted into a prepared planting hole, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and located either within garden bed or within a prepared bed within lawn,
- iv) mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- v) 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) 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.

P. Add Condition 89B - Pathway, access and door requirements to bin storage room, to read as follows:

The pathway and access between the Waste Storage Area and Collection Point will be:

- a) Solid, concrete, continuous, non-slip and clear of any obstructions and steps.
- b) A maximum ramp gradient of 1 in 8.
- c) Hazard free and not via a pathway with vehicular traffic.
- d) A minimum width of 1200mm.

Any doors fitted on the Waste Storage Area, pathway and access will be:

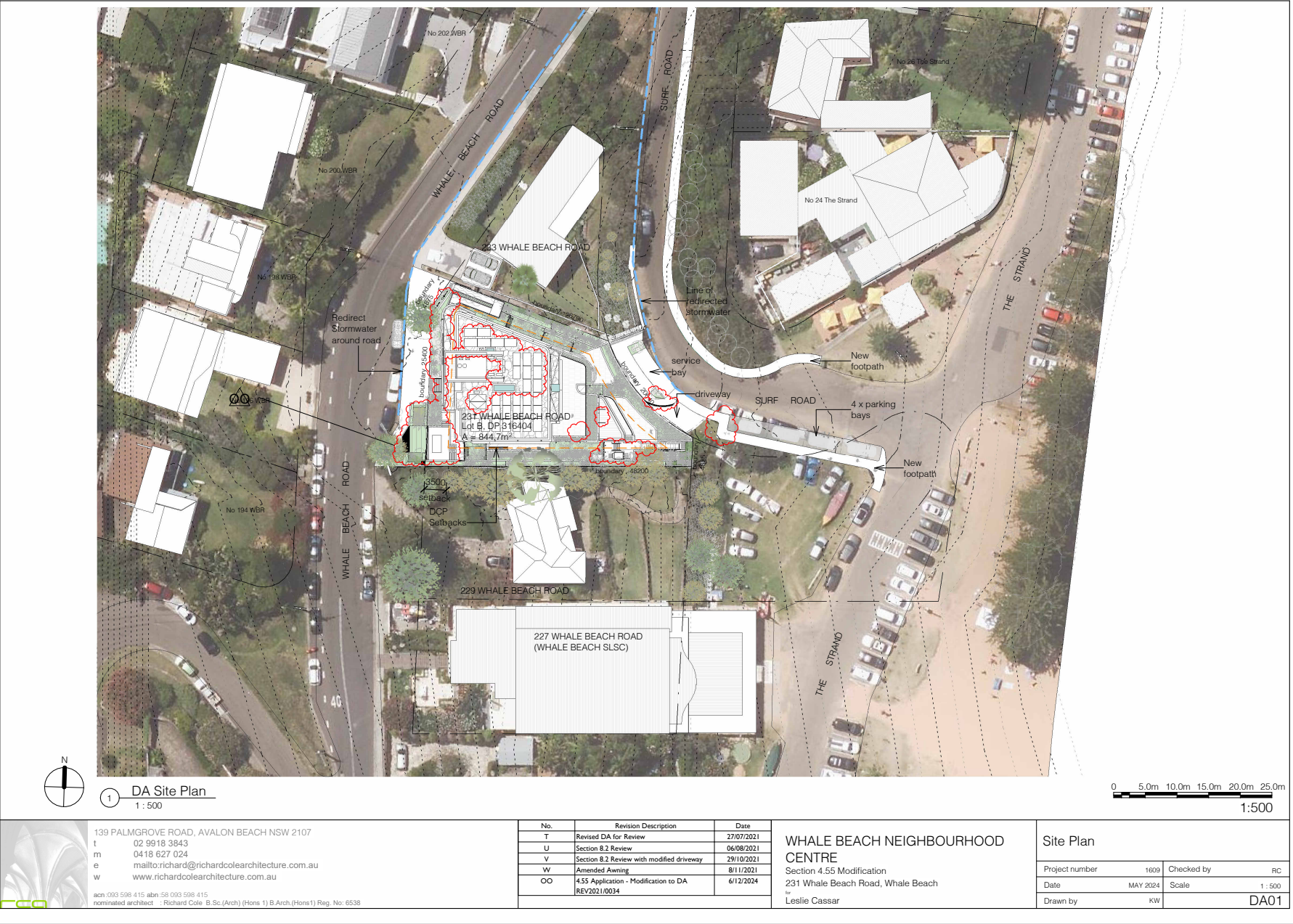
- e) A minimum width of 1200mm.
- f) Able to be latched in an open position.
- g) Unobstructed by any locks and security devices.
- h) Openable in an outward direction.

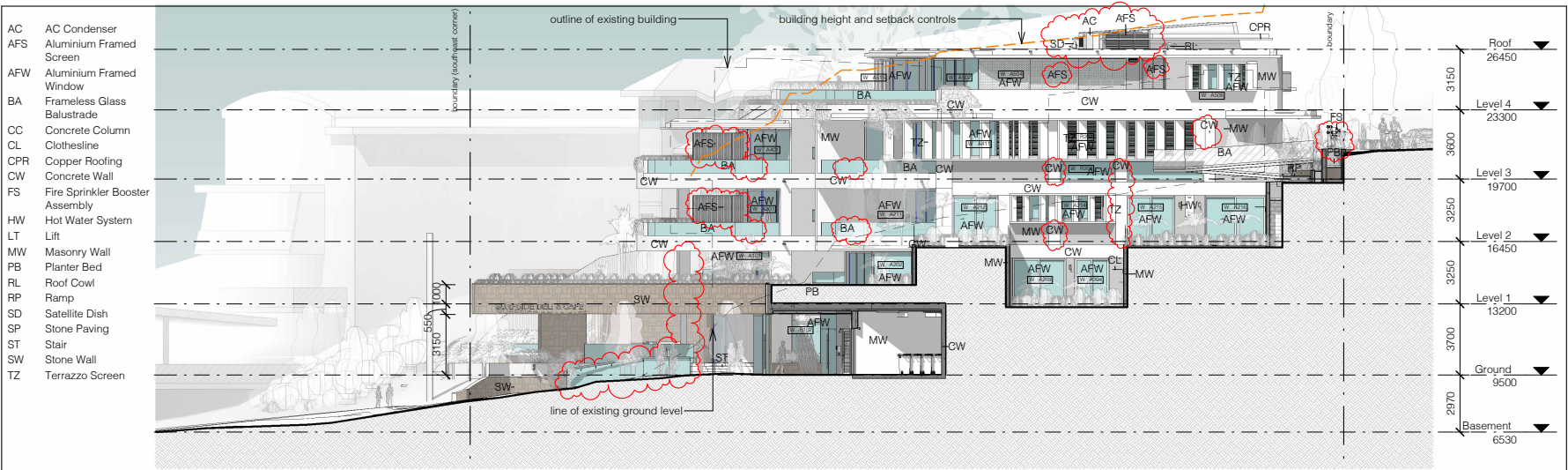
Reason: To ensure clear and unobstructed access to the bin storage room for service requirements.

Q. Add Condition 89C - Screening of Air Conditioning Condensers, to read as follows:

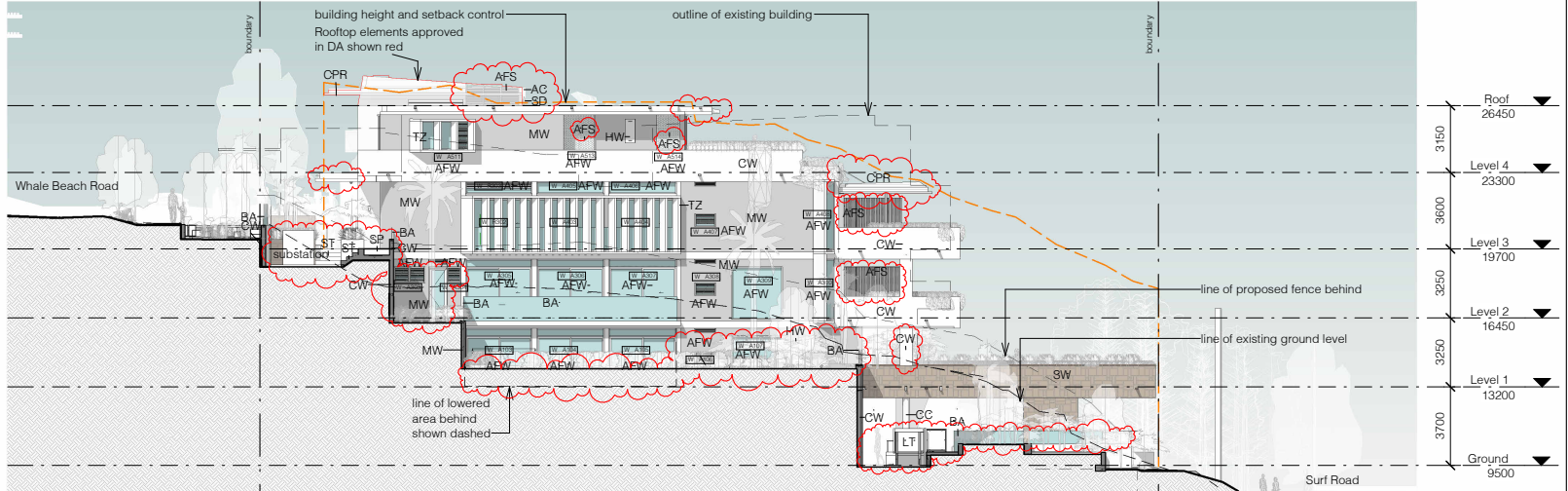
Prior to the issue of the Occupation Certificate, the Principal Certifier shall be satisfied that the air conditioning units located on the roof of the development are screened at the eastern elevation with a style and design to complement and integrate into the appearance of the building.

Reason: To ensure that the air conditioning units are not visually dominant.

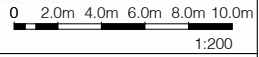




1 North Elevation
1 : 200



2 South Elevation
1 : 200



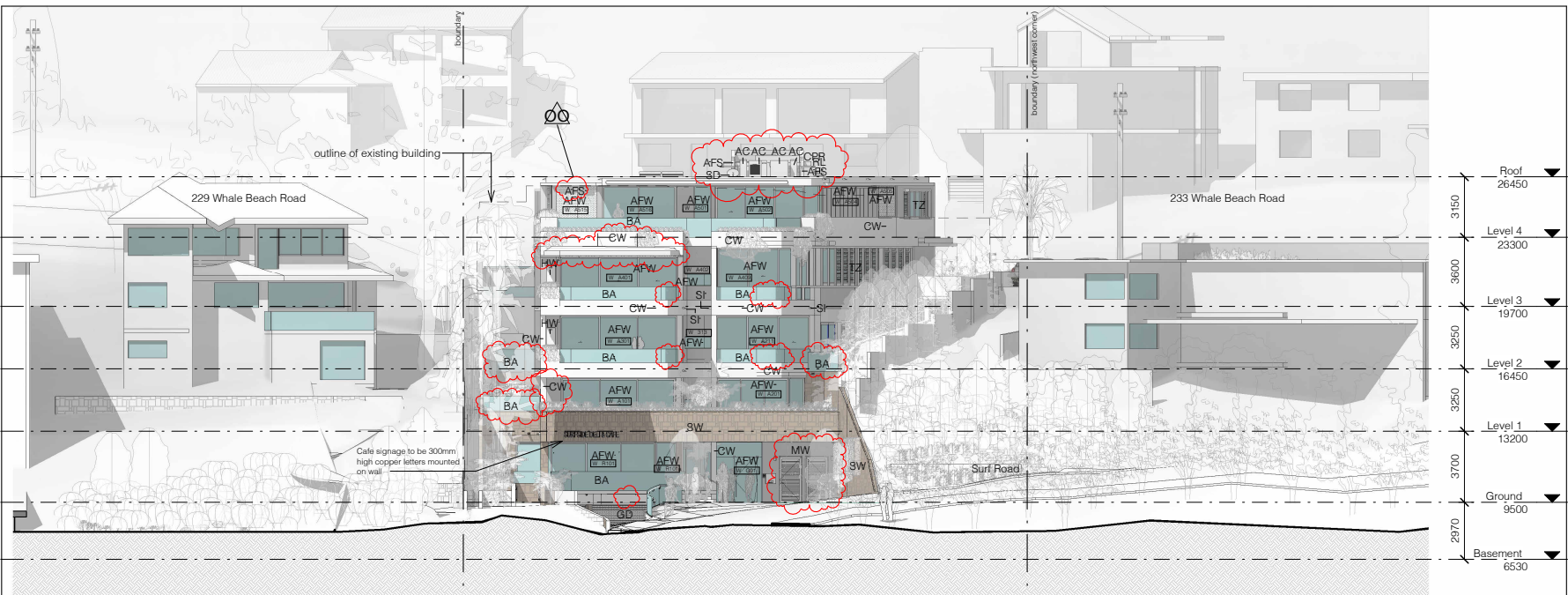
139 PALMGROVE ROAD, AVALON BEACH NSW 2107
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acn 003 598 415 abn 58 093 598 415
nominated architect : Richard Cole B.Sc.(Arch) (Hons) 1 B.Arch.(Hons)1 Reg. No: 6538

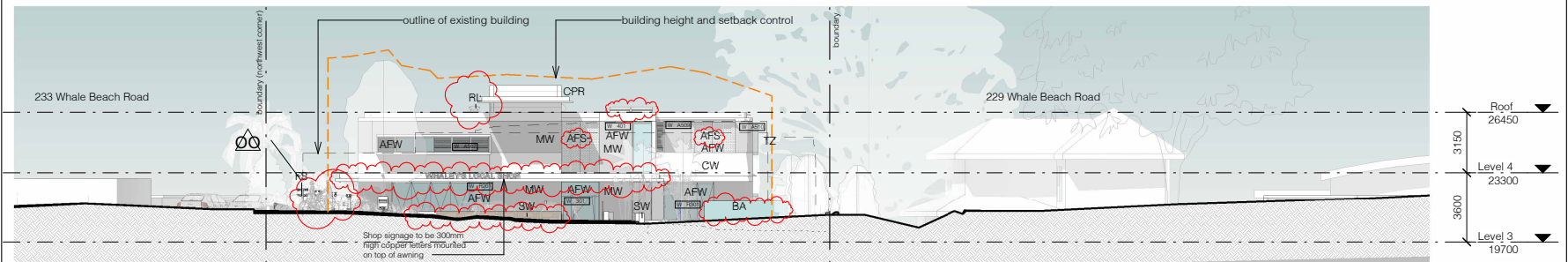
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S	Revised Development Application for Review	7/06/2021
T	Revised DA for Review	27/07/2021
U	Section 8.2 Review	06/08/2021
V	Section 8.2 Review with modified driveway	29/10/2021
OO	4.55 Application - Modification to DA REV2021/0034	6/12/2024

WHALE BEACH NEIGHBOURHOOD CENTRE
Section 4.55 Modification
231 Whale Beach Road, Whale Beach
for Leslie Cassar

Elevations	
Project number	1609
Checked by	RC
Date	MAY 2024
Scale	1 : 200
Drawn by	KW
DA10	



1 East Elevation
1 : 200



2 West Elevation
1 : 200

AC	AC Condenser	CW	Concrete Wall	MW	Masonry Wall	SW	Stone Wall
AFS	Aluminium Framed Screen	FS	Fire Sprinkler Booster Assembly	RL	Roof Cowl	TZ	Terrazzo Screen
AFW	Aluminium Framed Window	GD	Garage Door	SD	Satellite Dish		
BA	Frameless Glass Balustrade	HW	Hot Water System	SI	Spitter		
CPR	Copper Roofing						

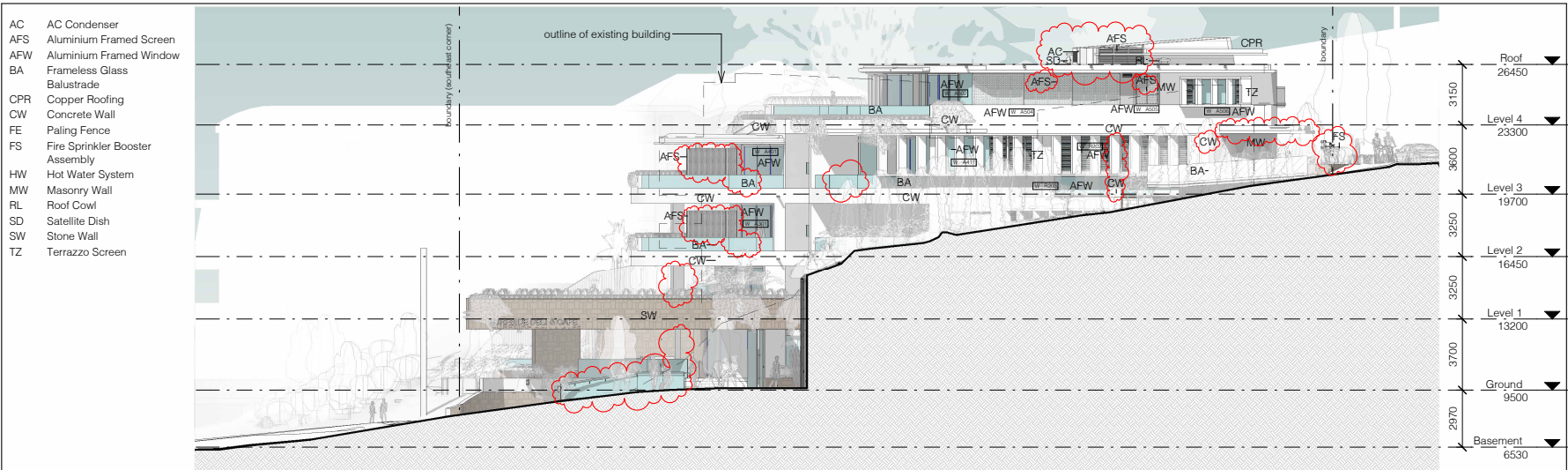
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acn 003 598 415 abn 58 093 598 415
nominated architect : Richard Cole B.Sc.(Arch) (Hons 1) B.Arch.(Hons1) Reg. No: 6538

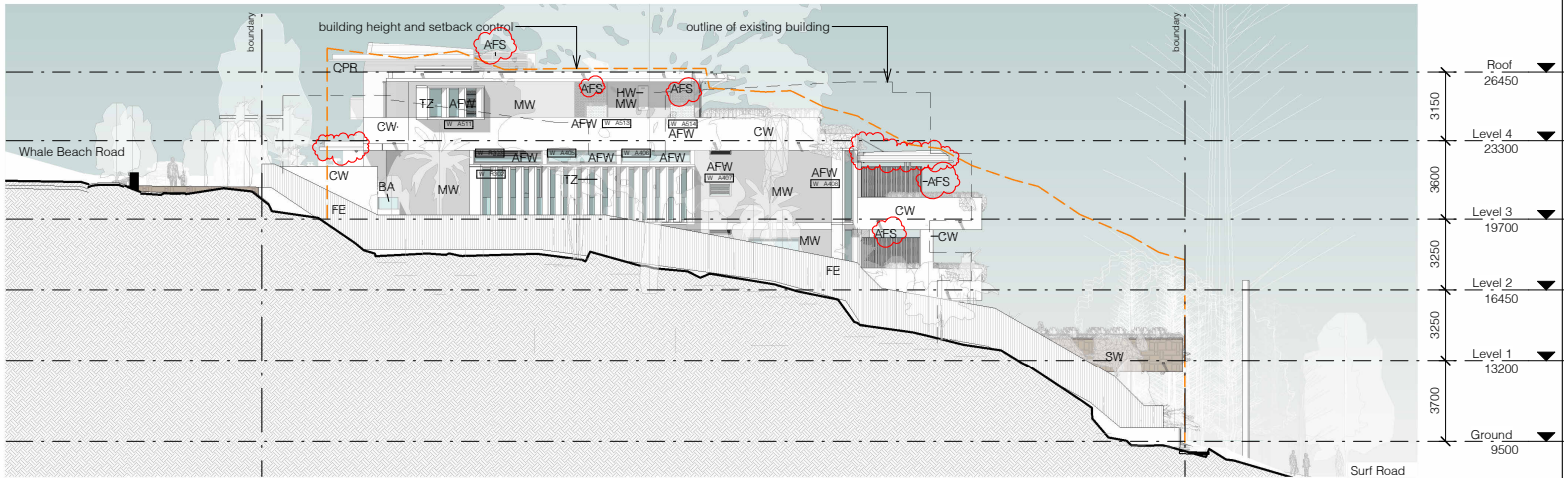
No.	Revision Description	Date
T	Revised DA for Review	27/07/2021
U	Section 8.2 Review	06/08/2021
V	Section 8.2 Review with modified driveway	29/10/2021
W	Amended Awning	8/11/2021
OO	4.55 Application - Modification to DA REV2021/0034	6/12/2024

WHALE BEACH NEIGHBOURHOOD
CENTRE
Section 4.55 Modification
231 Whale Beach Road, Whale Beach
for Leslie Cassar

Elevations	
Project number	1609
Checked by	RC
Date	MAY 2024
Scale	1 : 200
Drawn by	KW
	DA11



1 North Elevation - on boundary
1 : 200



2 South Elevation - on boundary
1 : 200

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acn 003 598 415 abn 58 093 598 415
nominated architect : Richard Cole B.Sc.(Arch) (Hons 1) B.Arch.(Hons1) Reg. No: 6538

No.	Revision Description	Date
S	Revised Development Application for Review	7/06/2020
T	Revised DA for Review	27/07/2021
U	Section 8.2 Review	06/08/2021
V	Section 8.2 Review with modified driveway	29/10/2021
OO	4.55 Application - Modification to DA REV2021/0034	6/12/2024

WHALE BEACH NEIGHBOURHOOD
CENTRE
Section 4.55 Modification
231 Whale Beach Road, Whale Beach
for Leslie Cassar

Boundary Elevations	
Project number	1609
Checked by	RC
Date	MAY 2024
Scale	1 : 200
Drawn by	KW
DA12	

ITEM 3.4	DA2025/0195 - 29 MCDONALD STREET FRESHWATER - 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.

RECOMMENDATION

- | |
|---|
| <p>A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.</p> <p>B. THAT Council as the consent authority approves Development Consent to DA2025/0195 for alterations and additions to a dwelling house on land at Lot A DP 383963, 29 McDonald Street FRESHWATER, subject to the conditions set out in the Assessment Report.</p> |
|---|

Reporting manager	Rodney Piggott
TRIM file ref	2025/253998
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - HOB

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2025/0195
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Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot A DP 383963, 29 McDonald Street FRESHWATER NSW 2096
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Nigel White

Application Lodged:	06/03/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/03/2025 to 01/04/2025
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 14.11%
Recommendation:	Approval

Estimated Cost of Works:	\$ 476,226.00
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EXECUTIVE SUMMARY

This development application seeks consent for Alterations and additions to a dwelling house including a first floor addition.

The application is referred to the Development Determination Panel (DDP) due to more than 10% variation to the Height of Building requirement.

No submissions were received.

Critical assessment issues relate to building height and a side boundary envelope. These issues have been addressed within the assessment report.

The Clause 4.6 request for the non-compliance with height standard arises from the excavation and location of the garage level which results in a 14.11% variation.

This report concludes with a recommendation that the DDP 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:

Construct an upper-level addition comprising of:

- A master bedroom with a walk-in robe and ensuite;
- Two additional bedrooms;
- A living area;
- A bathroom; and
- A staircase leading to the lower level.

Alterations to the ground and lower ground floor of the existing dwelling include:

- Demolish internal walls and a staircase;
- Install a new bathroom, WC and laundry;
- Cover the existing front deck with a new pitched roof to match the upper-level roof; and
- The installation of an internal staircase accessing the upper level.

ASSESSMENT INTRODUCTION

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

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

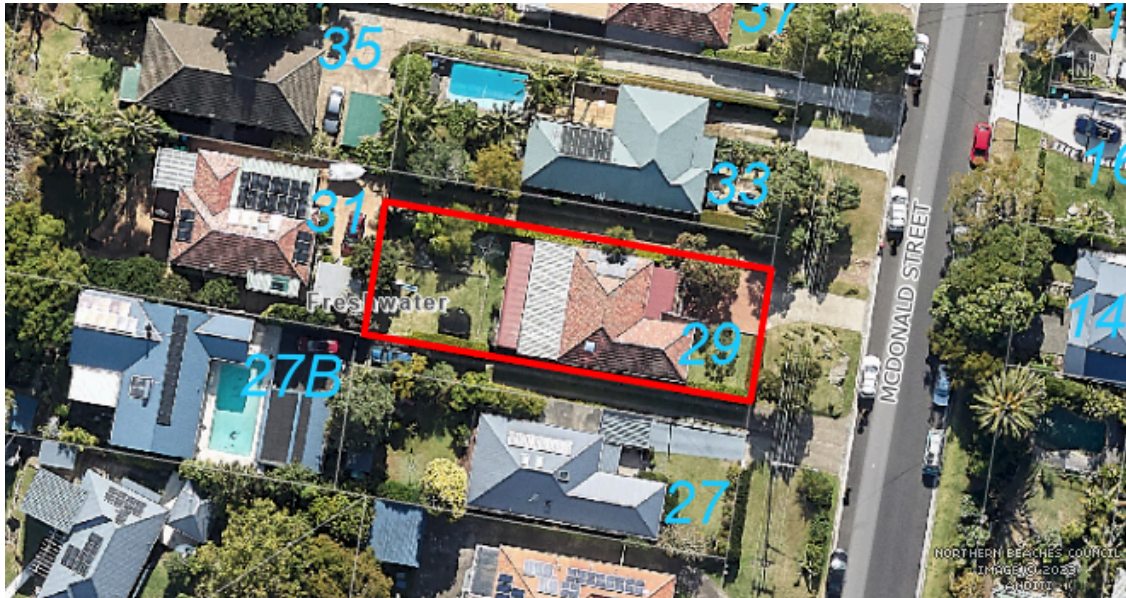
SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
 Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

Property Description:	Lot A DP 383963 , 29 McDonald Street FRESHWATER NSW 2096
Detailed Site Description:	The subject site consists of one allotment located on the western side of McDonald Street. The site is regular in shape with a frontage of 14.02m along McDonald Street and a depth of 41.15m. The site has a surveyed area of 576.8m². The site is located within the R2 Low Density Residential zone and accommodates a 2 storey dwelling with an attached garage. The site has a slope of approximately 5 degrees from East-North-East. The site has lawn area at the front and rear and trees and shrubs along the boundaries. There are no known threatened species on the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one to two storey dwelling. Site Inspection A site inspection was undertaken 11 April 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	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the	Part 4, <u>Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent.

Section 4.15 Matters for Consideration	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	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 Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 18/03/2025 to 01/04/2025 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

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. A1777629 dated 13 December 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

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

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.7m	14.11%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment**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 residential purposes, being alterations and additions to a 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 proposal retains the residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

The height variation does not impact on the landscape setting of the site and the surrounding setting. The proposed alterations and additions incorporate suitable colours and materials consistent with the existing and surrounding development. No substantial vegetation is required for removal to facilitate the proposed works. Therefore, the proposal is characterised by landscaped settings that are in harmony with the natural environment of Warringah.

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:	9.7m
Percentage variation to requirement:	14.11 %

4.3 Height of buildings

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

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

Comment:

The height and bulk of the modified dwelling will remain compatible with the existing development and surrounding dwellings on the southern side of McDonald Street .

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

Comment:

The height breach as a result of the replacement roof light and front extension is lower than the maximum height of the existing dwelling and is in a location that will not contribute to any adverse loss of views, privacy or solar access.

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

Comment:

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

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

Comment:

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

4.6 Exceptions to development standards

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

Development standard: Clause 4.3 Height of buildings

Requirement: 8.5m

Proposed: 9.7m

Percentage of variation: 14.11%

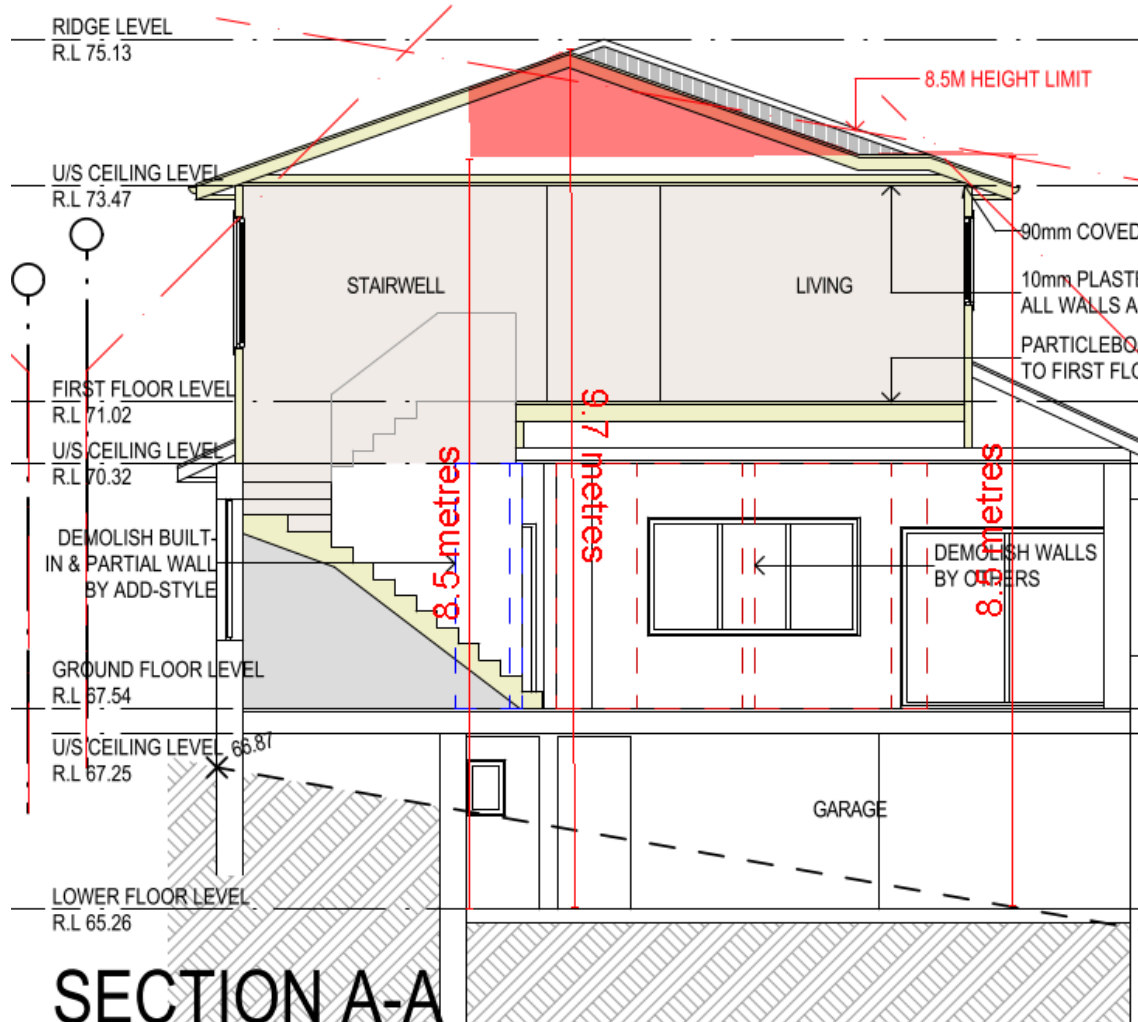


Image 1: Height of building variation.

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the WLEP 2011 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.3 is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 is unreasonable or unnecessary in the circumstances of this application for the following reasons:

'Compliance unnecessary

The proposed development proffers an alternative means of achieving the objective of the minimum building height standard. The surrounding precinct maintains sloping land and regular detached dwellings in the zone. Pitched roofs are common in the precinct.

The proposed development achieves the desired residential character without comprising the amenity of the surrounding dwellings in terms of visual impacts and solar access. A low-pitched roof is proposed in this instance to further assist in minimising the building height encroachment.

The minor exceedance of the building height standard does not result in a building that is excessively bulky. When viewed from the street, a conventional façade is generated.

The containment of the proposed addition within the footprint of the dwelling is preferred as there is no capacity to extend the dwelling at ground level given the built upon nature of the site.

The non-compliance will not give rise to adverse impacts, which would affect neighbouring dwellings.

As the development proffers alternative means of achieving the objectives of clause 4.3 based on the site context, strict compliance is unnecessary.

Compliance unreasonable

There would be no purpose served if strict compliance was required by the consent authority.

As will be detailed in subsequent parts of this request the variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (shadowing and privacy). There are no adverse 'flow on' non compliances or adverse environmental impacts arising from the variation in this instance.

A compliant development (building height) would have a similar performance regarding overshadowing and bulk/scale. A flat roof profile could be provided to achieve near compliance with the standard. Such would appear disjointed with the lower roof profile and is not the preferred outcome from an architectural perspective.

Despite the building height variation, a standard floor space ratio is achieved facilitating the orderly and economic development of the land.

No particular benefit would be derived from the application of the standard in this instance (rather compliance would result in negative urban design outcomes); strict compliance is therefore unreasonable.'

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

'In this case the variation to the building height control does not impact on the ability of the proposal to accord with all other development standards and design controls.

Strict compliance with the building height control in this instance would not achieve any additional architectural integrity or urban design merit of the development, as previously discussed.

Indeed, a lower roof pitch would result in an inferior design. The proposal represents the orderly and economic development of the land and does not give rise to adverse amenity issues to neighbours.

The ground and lower level of the dwelling is benched to address the fall in the land. The extent of the building height non-compliance is minor relative to external ground levels.

The variation will promote good design and internal amenity by providing a conventional finish to the front elevation. There are no adverse economic, environmental or social impacts arising.

Having regard to the above there are well founded environmental planning grounds to vary the development standard in this instance.'

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:

Planner's Comment:

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes 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 WLEP 2011.

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

Warringah Development Control PlanBuilt Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.2m	N/A	Yes
B3 Side Boundary Envelope	North - 5m	Within envelope	N/A	Yes
	South - 5m	Outside of envelope Length - 1.5m Width - 0.2 - nil Length - 2.2m Width - nil - 0.1m	N/A	No
B5 Side Boundary Setbacks	North - 0.9m	Ground floor - 1.8m First floor - 4m	N/A	Yes Yes
	South - 0.9m	First floor - 1.6m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	Ground floor - 9m First floor - 9.6m	N/A	Yes Yes
B9 Rear Boundary Setbacks	6m	18.6m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	39.2% (226.4m ²)	1.9%	Yes - no change

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3 Side Boundary Envelope	No	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	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E10 Landslip Risk	Yes	Yes

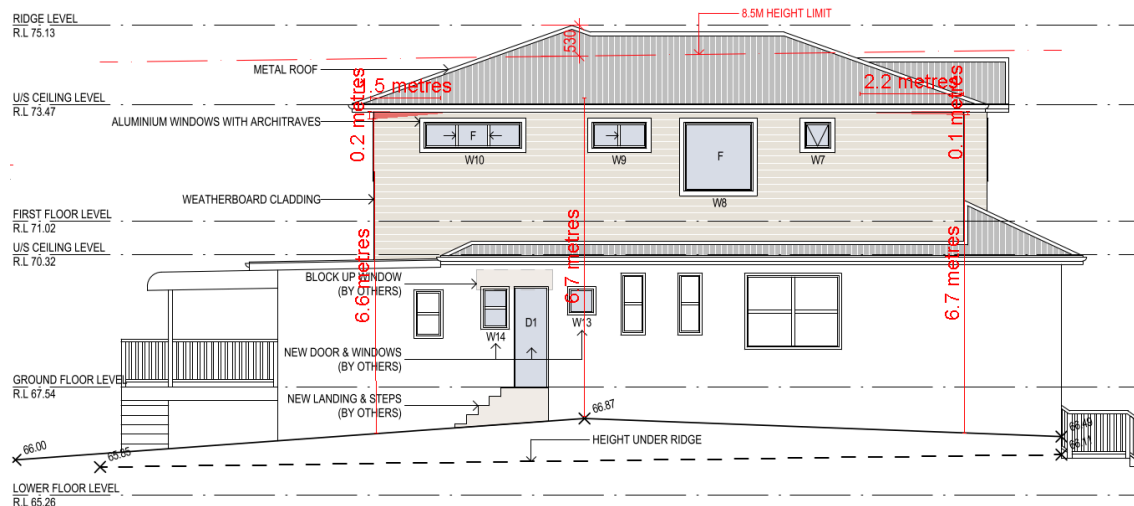
Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

The control requires buildings to be sited within a building envelope which is determined by projecting planes at 45° from a height of 5m above the ground level at the side boundary.

The proposed first floor encroaches into the southern side boundary envelope in two places for a length of 1.5m and a height of 0.2m - nil and a length of 2.2m and a height of 0.1m - nil.



SOUTH ELEVATION

Image 2: Encroachment into southern side boundary 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 that development does not become visually dominant by virtue of its height and bulk.*
Comment:

The proposed non-compliance with the building envelope control is not found to cause any unreasonable visual impacts. The dwelling is beneath the wall height requirement and appropriately setback from the side boundary. The overall built form is generally consistent with that of surrounding modernised development.

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

The proposed development ensures adequate light, solar access and privacy is obtained between dwellings. The proposal provides adequate and compliant setbacks to the rear, side and front boundaries and maintains the setback to the southern boundary established by the dwelling. The proposal complies with the requirements of the D6 - Access to Sunlight control and has been designed so that there are no unreasonable impacts on the privacy of the adjoining neighbours to the south. Adequate physical separation between the proposed development and habitable areas of the adjoining property to protect the privacy and amenity of the site and adjoining properties is achieved.

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

The proposed addition does not require alteration to the natural topography of the site. The

side boundary non-compliance is a result of the slope of the site and location of the existing dwelling. The proposal complies with the building height control of the WLEP and the front, side and wall height controls of the WDCP. It is considered that the addition is appropriately located to respond to the site topography. No unreasonable streetscape or amenity impacts are expected to arise as a consequence of the development.

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

D1 Landscaped Open Space and Bushland Setting

The existing site is deficient in Landscaped Open Space, the proposed works are within the building footprint and will not result in any change to the Landscaped Open Space on the site. The proposed works will maintain the current Landscaped Open Space of 39.2% on the site.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of \$4,762 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$476,226.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result

in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to the application proposing a greater than 10% variation to the Height of Buildings development standards under the WLEP.

The critical assessment issues that were addressed, in detail, within the assessment report include height of building and side boundary envelope.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Warringah Local Environmental Plan 2011 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2025/0195 for Alterations and additions to a dwelling house on land at Lot A DP 383963, 29 McDonald Street, FRESHWATER, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
4261 DA 1	B	Plans, Elevations and Sections	Add-Style Home Additions	13/12/24

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	-	-	-
Preliminary geotechnical Assessment	Ref: AG 25032	AscentGeo Geotechnical Consulting	29/01/25
4261 DA 1 - Sediment and Erosion Control Plan	A	Add-Style Home Additions	28/11/24
BASIX Certificate	Certificate number: A1777629	Add-Style Home Additions	13/12/24

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	12/03/2025

(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:
 - 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 \$4,762.26 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 \$476,226.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **Stormwater Drainage Disposal**

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

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil or Hydraulic 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 owner/developer must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater

Drainage Application form can be found on Council's website.

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

Reason: To ensure satisfactory management of stormwater.

8. **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.

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. **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.

11. **Waste Management Plan**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **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

13. 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.

14. 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.

15. **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.

16. **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.

17. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

18. **Stormwater Drainage Disposal Certification**

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

If any on site stormwater detention system is installed, a Legal Documents Authorisation Application must be lodged with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website.

A positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent must be created on title.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the owner's/developer's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

19. **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.

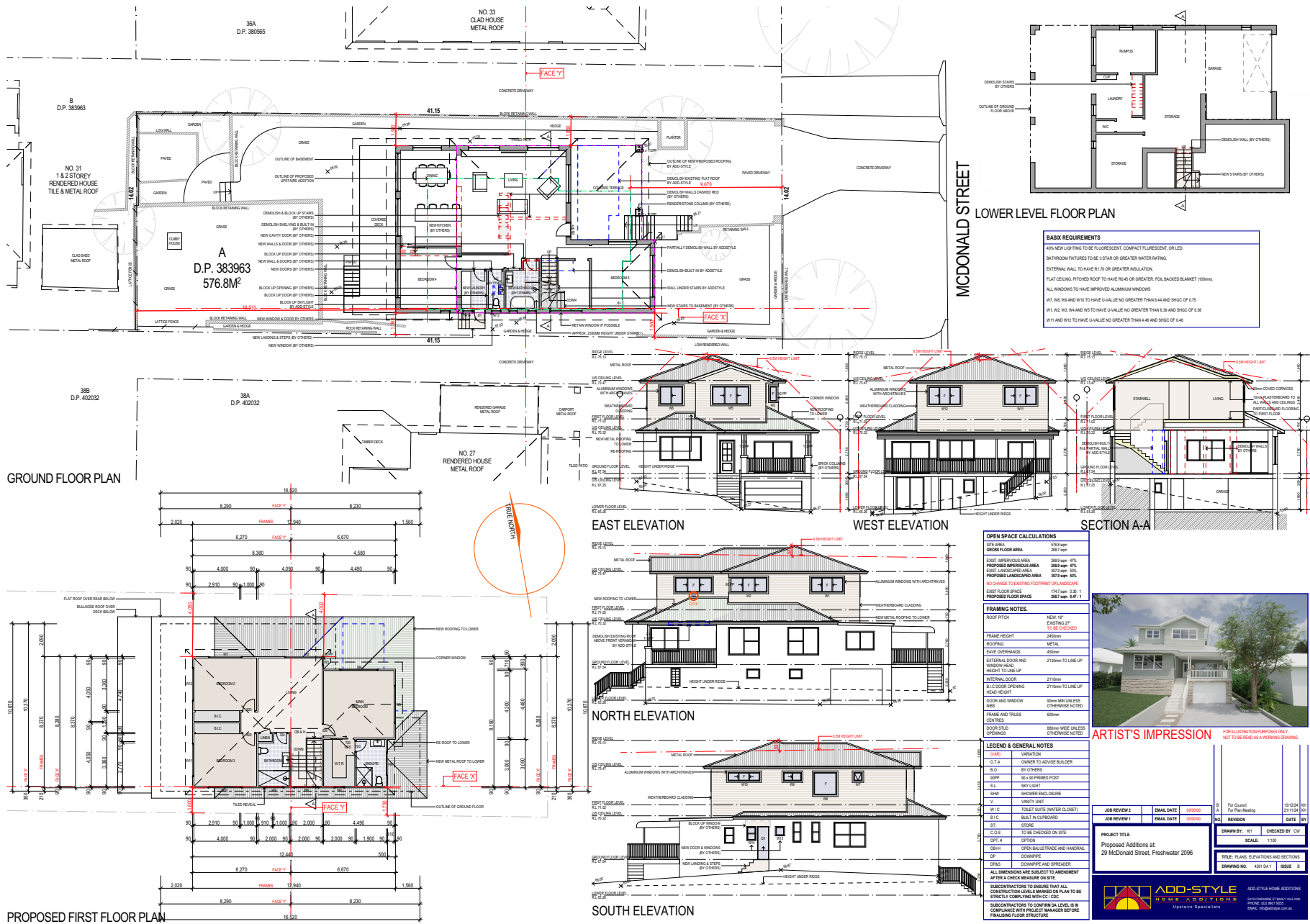
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure bushland management.

20. **Waste Management Confirmation**

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

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



Clause 4.6 Justification

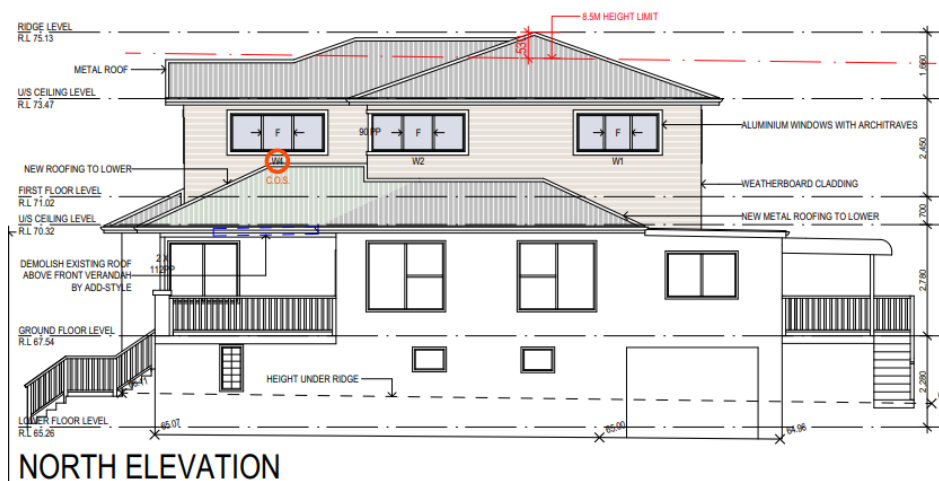
No 29 McDonald Street, Freshwater

Introduction - Content of the clause 4.6 request

Clause 4.3 of the Warringah LEP 2011 relates to Building height. The maximum building height applicable to the subject site is 8.5m.

The proposed development has a non-compliant building height for portion of the roof ridge by a maximum of approximately 530mm. Accordingly the proposal gives rise to a maximum building height of 9.03m being a departure of approximately 6.23%.

Given the above non-compliance with clause 4.3 of the LEP, consideration of the matter is given pursuant to the provisions of clause 4.6 of the LEP. The departure from the building height standard can be attributed primarily to the cross fall in the land from south to north and the existing under building and garage area which established a finished floor level below ground level external of the dwelling.



The objectives of clause 4.6 of the LEP 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.

Clause 4.6 of the LEP notably is designed to provide **flexibility when applying development standards particularly when the variation of the standard enables a better development outcome.**

The proposed building height is essentially exaggerated by the circumstances of the site given the existing of an excavated lower level of the building. A recent L&E Court case, *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* states that *the existing ground level on a brownfield site must be taken from the excavated ground level below the previous natural contours of the site.* Accordingly, an exaggerated building height eventuates.

A degree of flexibility to the application of the building height development standard is warranted in this instance.

The proposed upper level maintains a standard roof profile to provide visual interest. Of note is that the breach of the building height is centred on-site and contained well away from adjoining dwellings.

The existing dwelling is structurally sound and retains quality lower-level floor space worthy of retention. The location of the upper level as proposed is logical and appropriately relates to the street, rear yard, neighbouring dwelling circumstances and the slope of the land down. A site-specific design has been generated.

The proposed upper level has been sited centrally and partially to the southern side of the lower level to minimise the appearance of bulk when viewed from the front of the site and to capture distant views. The subject proposal refines the proportions of the existing upper level within a conventional design that includes a co-ordinated roof line over the entire dwelling.

Clause 4.6 of the instrument provides flexibility when applying development standards.

The proposed development has been architecturally designed to provide a well composed building that provides improved amenity for future occupants, while respecting the amenity of existing neighbouring properties.

The proposal is consistent with the built form in the locality, which includes some large dwellings maximising distant viewing opportunities.

No adverse planning consequences (privacy, visual impact, urban design/streetscape, heritage, neighbourhood character) arise from the variation with the proposed development sitting comfortably on-site within the required setbacks. Rather, in this case the variation facilitates a good design outcome in terms of amenity, streetscape and built form.

The provision of a flat roof profile can be provided to achieve near numerical compliance however such would appear disjointed and lack architectural expression. A compliant roof profile with the relevant Australian Standard has been applied in this instance.

The proposed departure from the building height relates to a small portion of the roof ridgeline only and is suitably centred on-site.

For reasons expressed in this submission the ‘flexibility’ provided by clause 4.6 of the LEP facilitates design outcome that does not impact on any adjoining property despite the proposed variation to the building height standard.

(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:

The height development standard is not expressly excluded from the operation of clause 4.6.

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

Objectives of development standard

The objectives of the height control development standard are:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

The subject site is zoned to accommodate low density residential development, and the immediate precinct contains dwellings built on similar sized lots which contain similarly scaled 2 and 3 level dwellings. The proposed dwelling is proportionate with its site boundaries and will be consistent in this regard.

There will be no additional disruption of views, loss of privacy or significant loss of solar access given the site context and the design initiatives that have been incorporated into the upper level.

There will be no erosion of bushland or scenic quality.

Compliance unnecessary

The proposed development proffers an alternative means of achieving the objective of the minimum building height standard. The surrounding precinct maintains sloping land and regular detached dwellings in the zone. Pitched roofs are common in the precinct.

The proposed development achieves the desired residential character without comprising the amenity of the surrounding dwellings in terms of visual impacts and solar access. A low-pitched roof is proposed in this instance to further assist in minimising the building height encroachment.

The minor exceedance of the building height standard does not result in a building that is excessively bulky. When viewed from the street, a conventional façade is generated.

The containment of the proposed addition within the footprint of the dwelling is preferred as there is no capacity to extend the dwelling at ground level given the built upon nature of the site.

The non-compliance will not give rise to adverse impacts, which would affect neighbouring dwellings.

As the development proffers alternative means of achieving the objectives of clause 4.3 based on the site context, strict compliance is unnecessary.

Compliance unreasonable

There would be no purpose served if strict compliance was required by the consent authority.

As will be detailed in subsequent parts of this request the variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (shadowing and privacy). There are no adverse ‘flow on’ non compliances or adverse environmental impacts arising from the variation in this instance.

A compliant development (building height) would have a similar performance regarding overshadowing and bulk/scale. A flat roof profile could be provided to achieve near compliance with the standard. Such would appear disjointed with the lower roof profile and is not the preferred outcome from an architectural perspective.

Despite the building height variation, a standard floor space ratio is achieved facilitating the orderly and economic development of the land.

No particular benefit would be derived from the application of the standard in this instance (rather compliance would result in negative urban design outcomes); strict compliance is therefore unreasonable.

Environmental planning grounds

A written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)).

The term “environmental planning grounds” is broad and encompasses wide environmental planning grounds beyond the mere absence of environmental harm or impacts : Tuor C in *Glenayr Avenue Pty Ltd v Waverley Council* [2013] NSWLEC 125 at [50].

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C held at [60] that environmental planning grounds as identified in cl 4.6 must be particular to the circumstances of the proposed development on a site. This finding was not disturbed on appeal (Pain J in *Four2Five Pty Ltd*

v Ashfield Council [2015] NSWLEC 90 & Meaher JA; Leeming JA in Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248.

Such grounds include matters that 'relate to (the) subject matter, scope and purpose of the Act, including the objects in s 1.3. '[14] This leaves developers with a wide range of grounds on which they can rely to justify a 4.6 request, including, for example, that the variation will promote good design and amenity, will allow for the orderly and economic development of land or that it will promote ecologically sustainable development by integrating relevant economic, environmental and social considerations.

In this case the variation to the building height control does not impact on the ability of the proposal to accord with all other development standards and design controls.

Strict compliance with the building height control in this instance would not achieve any additional architectural integrity or urban design merit of the development, as previously discussed.

Indeed, a lower roof pitch would result in an inferior design. The proposal represents the orderly and economic development of the land and does not give rise to adverse amenity issues to neighbours.

The ground and lower level of the dwelling is benched to address the fall in the land. The extent of the building height non-compliance is minor relative to external ground levels.

The variation will promote good design and internal amenity by providing a conventional finish to the front elevation. There are no adverse economic, environmental or social impacts arising.

Having regard to the above there are well founded environmental planning grounds to vary the development standard in this instance.

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

(a) the consent authority is satisfied that—

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

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

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

The objectives of the R2 low density zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The matters required to be demonstrated by subclause (3) have been adequately addressed.

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

The proposed development is consistent with the objectives as follows:

The proposed development provides for the construction of a standard and well-proportioned upper-level addition. The proposed development has been site specifically designed and will positively contribute to the streetscape relative to the existing built form on the site. A general upgrade of the existing built form and landscape will also occur.

The proposed development is consistent with the desired future character for the locality. The proposed development is well contained on-site and will not result in significant adverse amenity impacts on adjoining properties.

The proposed development provides an appropriate low-density infill development and contemporary construction.

The proposed height variation is of no consequence in respect of this objective. Approval of the proposed development will have no adverse impact on any other nearby development opportunities.

The proposed height encroachment does not result in any significant view loss, loss of privacy or overshadowing in the context of the site.

There is no adverse heritage impacts associated with the proposed development. The height and scale of the development is typical within the residential context.

Standard floor to ceiling height is proposed over two levels inclusive of a standard roof pitch. Having regard to the above the proposal is consistent with the objectives of the height control and the objectives of the zone.

The proposed variation does not raise any matter of significance for State or regional environmental planning.

There is no public benefit that would be achieved by maintaining the development standard or compromised by approving the building as proposed.

Conclusion

No adverse matters arise in respect of the above considerations.

In view of the above, the proposed variation from the development standard is reasonable in this instance. A typical pitched roof profile is proposed maintaining a consistent built form with other dwellings in the vicinity and appropriately addressing site circumstances.

A handwritten signature in black ink, appearing to read 'Nigel White', with a stylized flourish at the end.

Prepared by: Nigel White
Bachelor of Applied Science (Environmental Planning)

December 2024

**ITEM 3.5 DA2025/0179 - 46 BUNGALOE AVENUE BALGOWLAH -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING A CARPORT**

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 DA2025/0179 for alterations and additions to a dwelling house including a carport on land at Lot 21 DP 11430, 46 Bungalow Avenue BALGOWLAH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2025/254008
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - FSR

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2025/0179
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Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 21 DP 11430, 46 Bungaloe Avenue BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a carport
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:	Specialist Architectural Services Pty Ltd

Application Lodged:	12/03/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/03/2025 to 03/04/2025
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 21.9%
Recommendation:	Approval

Estimated Cost of Works:	\$ 107,250.00
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EXECUTIVE SUMMARY

This development application seeks consent for Alterations and additions to a dwelling house including a carport.

The application is referred to the Development Determination Panel (DDP) due to a greater than 10% variation to the Floor Space Ratio (FSR) requirement of the Manly Local Environment Plan (MLEP).

No submissions were received.

Critical assessment issues relate to FSR, side boundary setback, front boundary setback, total open space and parking requirements. These issues have been addressed within the assessment report.

The 4.6 request for the non-compliance with FSR standard arises due to an undersized allotment. It is noted that the FSR does achieve compliance with the FSR variations permitted within MDCP for undersized allotments. However, the FSR for the site will be reduced from 253m² or 0.55:1, which was approved under a recent Complying Development Certificate. The reduced FSR of 0.53:1 (245m²), maintains the existing bulk and scale of site.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to a dwelling house. The works include the following:

Ground Floor Level:

- Demolition works and addition at the rear of the dwelling including a covered deck and new glass doors,
- An extension to the existing ground floor rear deck with fixed privacy screening along the northern elevation, and enclosed walls on the southern elevation,
- Roofing over the extended deck area.

External Works:

- New detached carport over the existing hardstand area,
- Replace existing astro turf with new landscape lawn area to the rear of the site,
- New landscaped areas within the side setbacks.

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 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 21 DP 11430 , 46 Bungaloe Avenue BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of one allotment located on the eastern side of Bungaloe Avenue BALGOWLAH. The site is regular in shape with a frontage of 12.19m along Bungaloe Avenue and a depth of 37.53m. The site has a surveyed area of 460m². The site is located within the R2 Low Density Residential zone and accommodates a two storey brick dwelling with a tile roof and a swimming pool and deck located at the rear. Car parking is available on the existing concrete strip hardstand driveway within the front setback along the north-western side boundary. The site has a general fall from the front northern boundary towards the eastern rear boundary, with a total fall of approximately 3m over its length. The site has a lawn area in the front and rear with trees and shrubs along the boundaries. There are no known threatened species on the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one to two storey residential dwellings of varying architectural styles. Site inspection A site inspection was undertaken 2 April 2025.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's

records has revealed the following relevant history:

Application 10.2004.294.1

Alterations & Additions to Dwelling of external stairs
Determined - 06/09/2004

Application CDC2024/0988

Alterations and additions to existing dwelling
Determined - 17/12/2024

Application CDC2021/1015

Construction of a swimming pool, deck and retaining walls
Determined - 08/10/2021

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>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.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 20/03/2025 to 03/04/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<u>Supported, subject to conditions</u>

Internal Referral Body	Comments
	The application seeks consent for: Alterations and additions to a dwelling house including a carport. The plans indicate that the new carport is in the same location as the existing hardstand area. The plans indicate a new crossover widened to the width of the existing gutter crossing. The proposed works are outside of the structural root zone of the street tree forward of the dwelling and it is considered that the works can be undertaken with an acceptable level of impact on the tree, subject to conditions.
NECC (Development Engineering)	<u>Supported, subject to conditions</u> The proposed development is in Region 3. Vehicle crossing construction is proposed. Development engineering raises no objections to the proposed development, subject to conditions.

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. A1783881 dated 17 February 2025).

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

SEPP (Resilience and Hazards) 2021

Chapter 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	8.1m	N/A	Yes
Floor Space Ratio	FSR: 0.45:1	FSR: 0.53:1	21.95%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
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 residential purposes, being alterations and additions to a 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.

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45 to 1
Proposed:	0.53 to 1
Percentage variation to requirement:	21.9%

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 proposal will result in a reduction in the FSR for the site. While the proposal will still exceed the FSR requirement for the site, the development is considered to be reasonable in terms of bulk and scale. The existing setbacks of the dwelling are to be maintained and the building height is consistent with the streetscape.

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

Comment:

The proposed development will not result in a bulk and scale that threatens to obscure important landscape and townscape features.

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

Comment:

The proposed development is considered to be in keeping with the low density residential character of the locality and maintains existing landscape elements on the site.

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

Comment:

The proposed development is not expected to cause any unreasonable environmental impact on the use or enjoyment of nearby public open space.

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

Comment:

Not applicable.

4.6 Exceptions to development standards

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

Development standard: Clause 4.4 Floor space ratio

Requirement: 0.45:1

Proposed: 0.53:1

Percentage of variation: 21.9%

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 proposed development does not comply with the FSR development standard pursuant to clause 4.4 of MLEP which specifies an FSR of 0.45:1, largely as a consequence of the Complying Development approval which provides for additional floor area for the dwelling to a total of 253m² or 0.55:1. The subject application will see a minor reduction in the total gross floor area to 245m² or 0.53:1 to.

This Written Request is provided for abundant caution as the works do not increase the approved floor

space and the works will maintain a compatible bulk and scale to that approved by way of the Complying Development Certificate.

As approved GFA is not unreasonable in bulk and scale and by being located towards the rear of the first floor level of the dwelling, will not contribute to the building presenting a significant bulk and scale or one which is out of context with the surrounding dwellings, 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...

- *The proposal provides for alterations and additions to an existing dwelling which are intended to provide for a development outcome that benefits the surrounding neighbours by maintaining a compatible bulk and scale and preserving existing view sharing opportunities.*

The compatible building form with a low profile roof and earthy external finishes are considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade, together with the retention of the existing side setbacks at the street elevation and complementary external finishes will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing style of single dwelling housing within the locality and as such, will not be a visually dominant element in the area.

- *The proposal will not see the loss of any significant vegetation. The built footprint of the existing dwelling remains largely unchanged and is therefore not considered to result in any adverse effects on the scenic qualities of the foreshore.'*

(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:

- The proposed alterations and additions introduce modulation and architectural relief to the building's façade and by locating the new works at the rear of the first floor level, the proposal will not see any substantial change to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g).

- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Bungaloe Street which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new works which exceed the gross floor area control and FSR standard of 0.45:1 are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.

Planner's Comment:

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development upgrades the usability of the existing dwelling and such building is an orderly response to the development of the site, thereby satisfying objects 1.3(c) of the EPA Act.
- The development promotes good design and amenity of the built environment, noting that the works will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties, thereby satisfying objects 1.3(g) of the EPA Act.

Public Interest:

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

Conclusion:

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

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

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: 460m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 7.1m (based on gradient 1:10)	5m	N/A	Yes
	S: 7.1m (based on gradient 1:10)	4.7m	N/A	Yes
4.1.2.2 Number of Storeys	2	2/3	N/A	Yes - no change
4.1.2.3 Roof Height	Height: 2.5m	3.1m	N/A	Yes - no change
	Pitch: maximum 35 degrees	28.77 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Carport 0.2m	N/A	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	S: 1.5m N: 1.6m	1.7m 1m	N/A 37.5%	Yes No
4.1.4.4 Rear Setbacks	8m	11.5m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	51.6%	6.13%	No
	Open space above ground 25% of total open space	15.78%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	33%	5.8%	No
4.1.5.3 Private Open Space	18m ² per dwelling	18m ²	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	3.4m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 spaces	N/A	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	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
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	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
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

4.1.3 Floor Space Ratio (FSR)

MDCP provides guidance in assessing the floor space ratio of undersized allotments.

The site is located in 'Area I' on the MLEP Lot Size Map, meaning that, based on an actual lot size of 461m², calculation of the floor space ratio can be made as if the lot size were 500m².

As such, the floor space ratio of the proposed development is 0.5:1, which results in a marginal decrease to the non-compliance with the maximum permitted FSR of 0.45:1.

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the MLEP. In summary, the applicant has adequately justified that compliance with the Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to contravene the development standard.

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

Description of non-compliance

4.1.4.1 Street Front setbacks

The control requires front setbacks to relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity of the site. Where the street front building lines of neighbouring properties are variable, and there is no prevailing building line in the immediate vicinity, a minimum 6m front setback generally applies.

In this instance, the eastern side of Bungaloe Avenue has a consistent setback of Dwellings to the front boundary. The Dwelling on the site will be retaining this setback. However, there are several examples of carports within the front setback as many of the houses on the eastern side of Bungaloe are older and have limited space for car parking behind the front boundary setback or existing dwellings. The proposed carport is setback 0.2m from the front boundary.

4.1.4.2 Side setbacks and secondary street frontages

Clause 4.1.4.2 of the MDCP requires development be setback at least one third of the adjoining wall height. The development proposes to extend the height of the existing external walls, maintaining the existing setback to the side boundary of 1.6m, to the northern side boundaries.

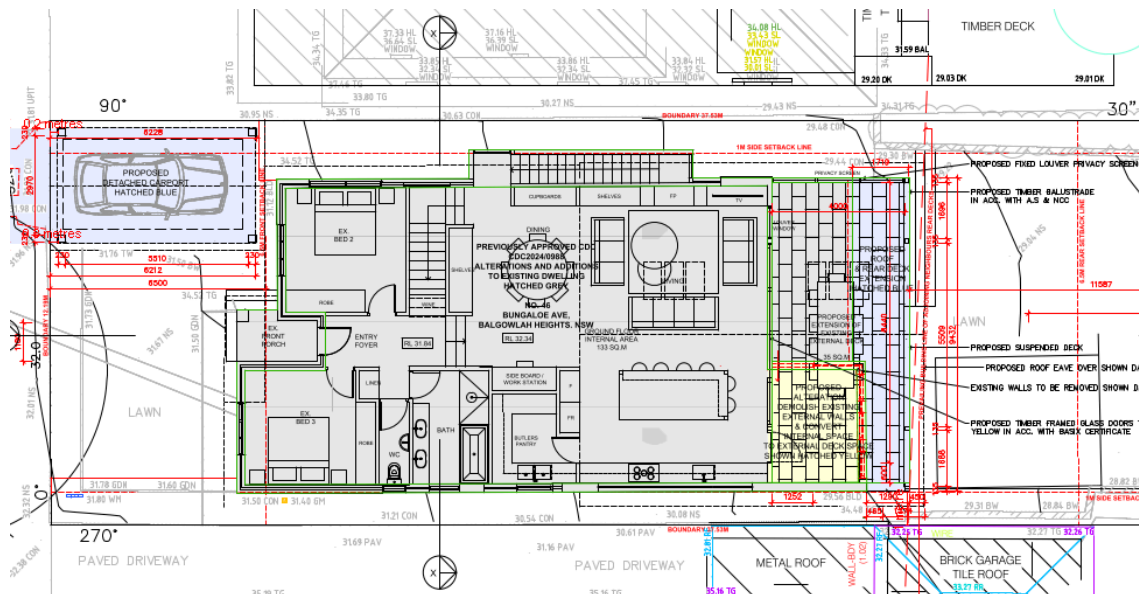


Image 1: Ground floor front and northern side boundary non-compliance.

Merit consideration:

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

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

Comment:

The proposed carport will not detract from the existing streetscape, or impact upon the desired spatial proportions of the street, street edge, and landscape character of the street. The existing streetscape comprises of multiple variations to the street front setback, and as such the addition of the proposed carport is consistent with properties along the Bungaloe Avenue.

The proposed rear addition to extend the deck will be maintaining the existing setback to the side boundary and is located at the rear of the site. The location of the works will not be visible from the street and will maintain and enhance the existing streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed alterations are generally within the footprint of the existing building and will result in a minor change to the built form. The development is considered to provide reasonable amenity including privacy, solar access and view sharing for the 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, whilst maintaining safe and adequate parking by providing an covered car parking space.

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

Comment:

Flexibility is afforded in this circumstance, as the siting of the buildings is considered appropriate, and will not result in any unacceptable amenity impacts.

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 development results in a compliant landscaped area that provides opportunity for plantings, and enhancement of vegetation. The subject site does not detract from the context of the site and the site does not directly adjoin open space lands, national parks, or urban bushland.

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

Comment:

N/A - the site is not located within a bushfire prone zone

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 51.6% of the site as TOS, which does not satisfy the numeric requirement and has a variation of 6.13%.

Merit consideration:

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

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

Comment:

No significant vegetation is proposed to be removed. The landscape plan provides significant new vegetation to the site, including the removal of astro turf which will increase the landscaping on the site and also increases the total open space.

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

Comment:

The proposed development includes deep soil landscaped areas within the rear and 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.

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

Description of non-compliance

Under MDCP Clause 4.1.6, dwellings require the provision of two off-street parking spaces. The application proposes a single carport over the existing single hardstand parking space on the driveway.

The clause allows for Council to consider the provision of only one space where adherence to the requirement for two spaces would adversely impact on the streetscape or on any heritage significance identified on the land or in the vicinity. It is considered that the provision of two car parking spaces within the front setback of the site would likely result in a loss of landscaped area within the front setback and an unreasonable increase in bulk and scale of the development. For these reasons it is considered that the requirement of two car parking spaces would result in an adverse impact on streetscape and one car parking space is more desirable.

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 carport will be built over the existing hardstand carparking space and provides accessible and adequate parking for the site. The size and width of the Carport is considered appropriate for the site.

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

Comment:

The development does not result in an intensification of use or a reduction or increase of car parking spaces available on site.

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

Comment:

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

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

Comment:

The proposed carport does not require any excavation.

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

Comment:

The number of footpath crossings remains unchanged.

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

Comment:

The proposed carport is located over the existing driveway and will not increase the impervious surface on the site. The existing landscaping at the front of the site will screen internal accesses from public view.

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

Comment:

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

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

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 \$ 536 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 107,250.

CONCLUSION

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

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

- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for Alterations and additions to a dwelling house including a carport has been referred to the Development Determination Panel (DDP) due to a greater than 10% variation to the FSR requirement under the MLEP.

The critical assessment issues that were addressed, in detail, within the assessment report include FSR, side boundary setback, front boundary setback, total open space and parking requirements..

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 DA2025/0179 for Alterations and additions to a dwelling house including a carport on land at Lot 21 DP 11430, 46 Bungaloe Avenue, 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-001	-	Site Plan	Raymond and Williams Architectural Design and Construction	27.11.2024
CD-104	H	Lower Ground Floor Plan	Raymond and Williams Architectural Design and Construction	11.11.2024
CD-101	-	Ground Floor Plan	Raymond and Williams Architectural Design and Construction	15.01.25
CD-102	-	First Floor Plan	Raymond and Williams Architectural Design and Construction	15.01.2025
DA-300	-	Elevations Sheet 01	Raymond and Williams Architectural Design and Construction	04.11.2024
DA-302	-	Elevation Sheet 02	Raymond and Williams Architectural Design and Construction	27.11.2024
CD-300	G	Section Sheet 01	Raymond and Williams Architectural Design and Construction	27.11.2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
DA-700 - Landscape Plan	-	Raymond and Williams Architectural Design and Construction	15.01.2025
DA-900 - Stormwater Management Plan	-	Raymond and Williams Architectural Design and Construction	15.01.2024
DA-901 - Erosion & Sediment Control Plan	-	Raymond and Williams Architectural Design and Construction	15.01.2024
Waste Management Plan	-	-	-
BASIX Certificate	Certificate number: A1783881	SPECIALIST ARCHITECTURAL SERVICES PTY LTD	17/02/2025

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. 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.

3. 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

4. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$536.25 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$107,250.00.

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 Disposal from Low Level Property**

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular Section 5.5 Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with Northern Beaches Council's policy by an appropriately qualified Civil Engineer are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

7. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide on the kerb line and 4.0 metres wide on the property boundary in accordance with Northern Beaches Council Standard Drawing A4 3330/3 NL 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.

8. **Complying Development Certificate**

Complying Development Certificate No. 240251/01 issued by Private Certifier Australia, dated 17/12/2024 ("the CDC") is modified as coloured to enable the development shown in the approved plans of this development consent to be constructed and integrated with the development approved by the CDC.

The building construction details for the modified CDC are to be provided to the Certifying Authority with the Construction Certificate plans and details for this consent, prior to the issue of a Construction Certificate.

Reason: To ensure the development is constructed in accordance with this consent.

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. **Waste Management Plan**

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

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

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

11. **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.

12. **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

13. **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

14. Protection of Existing Street Trees

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

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

Reason: Street tree protection.

15. 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,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project

- Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and complaint to AS4970-2009 Protection of trees on development sites.

Reason: Tree and vegetation protection.

16. Condition of Trees

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works.

In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

17. **Road Reserve**

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

Reason: Public safety.

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

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

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

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

19. **Demolition Works - Asbestos**

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

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

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

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

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

20. **Survey Certificate**

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

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

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

21. **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. **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.

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. **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.

25. **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.

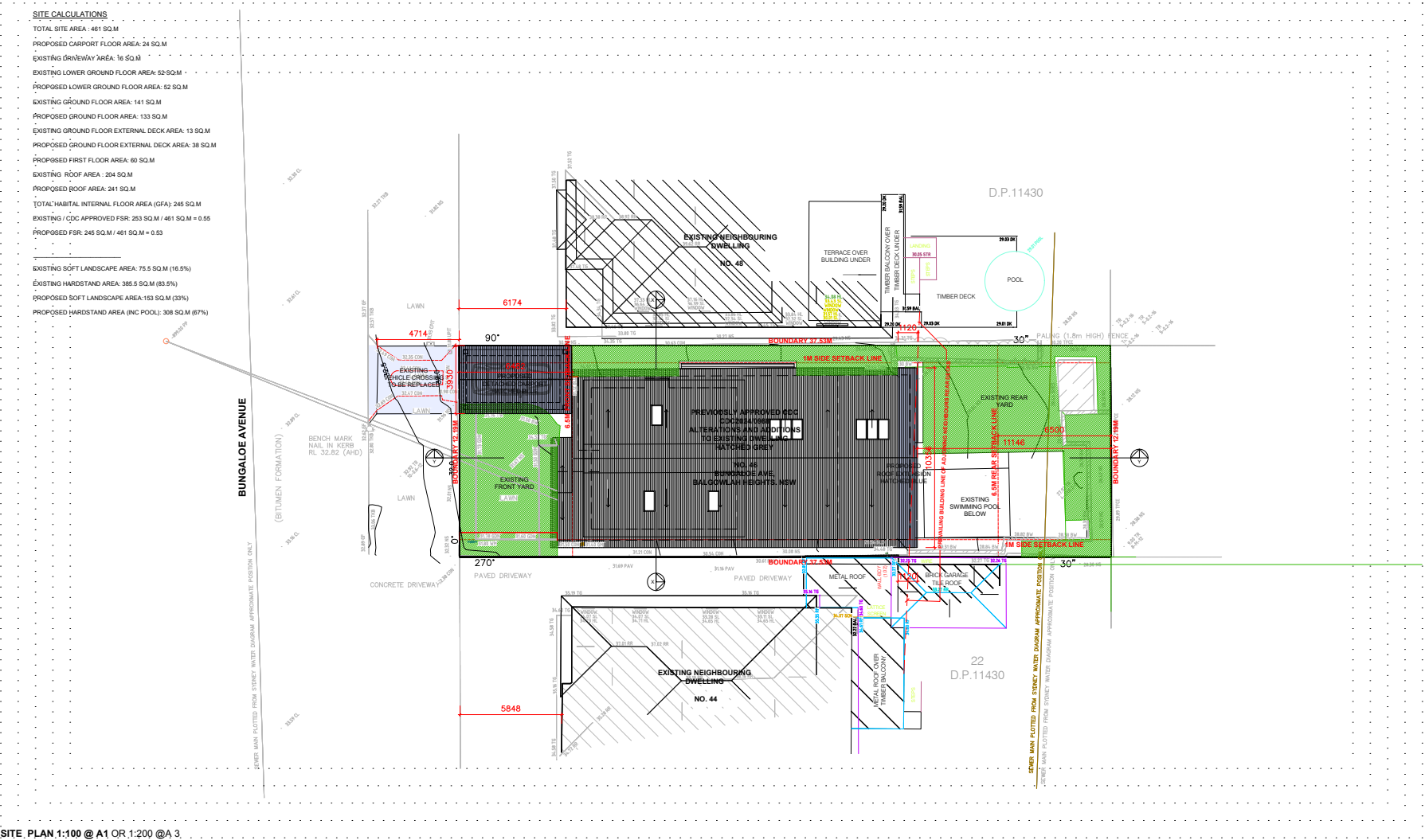
Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

26. **Reinstatement of Kerb**

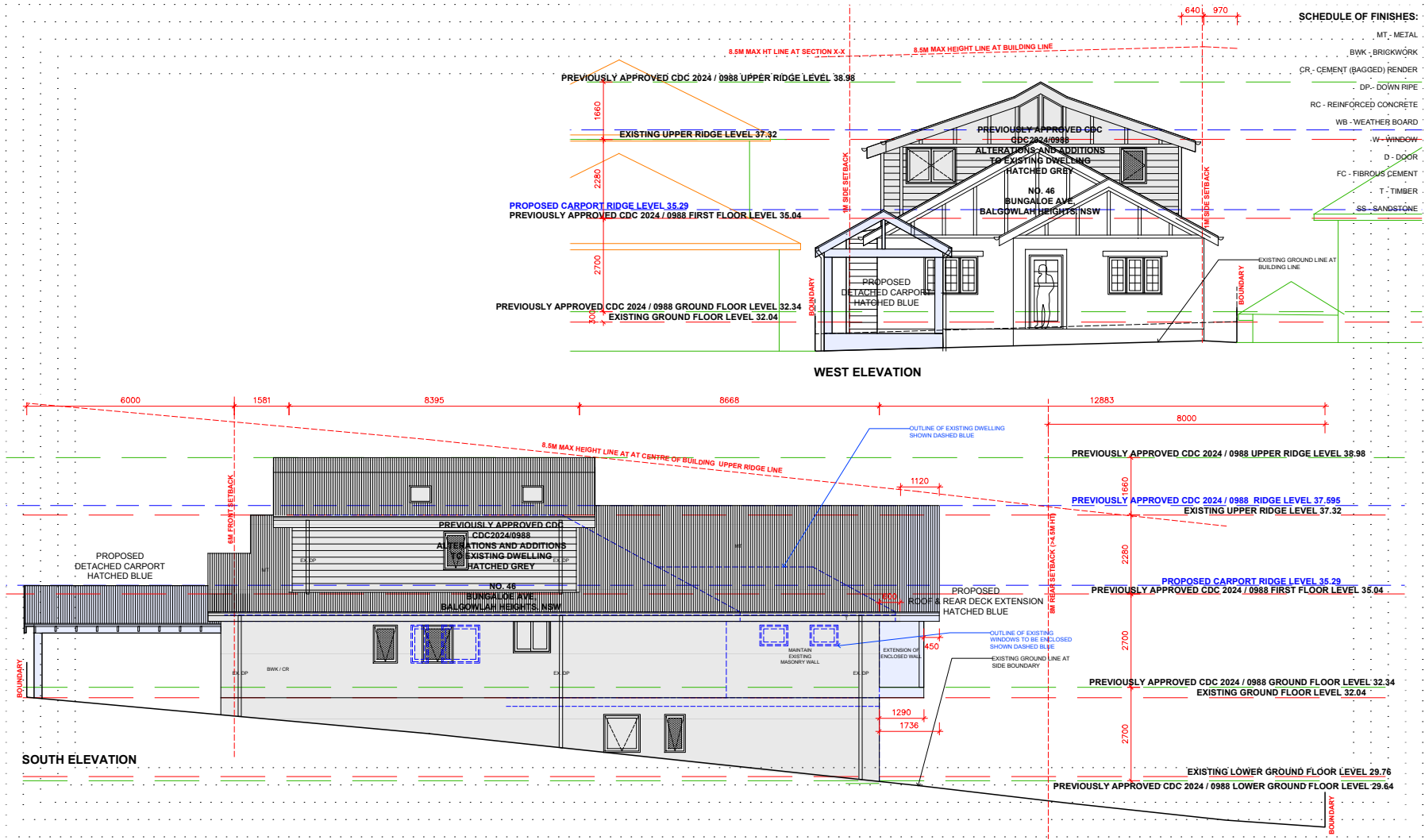
The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

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

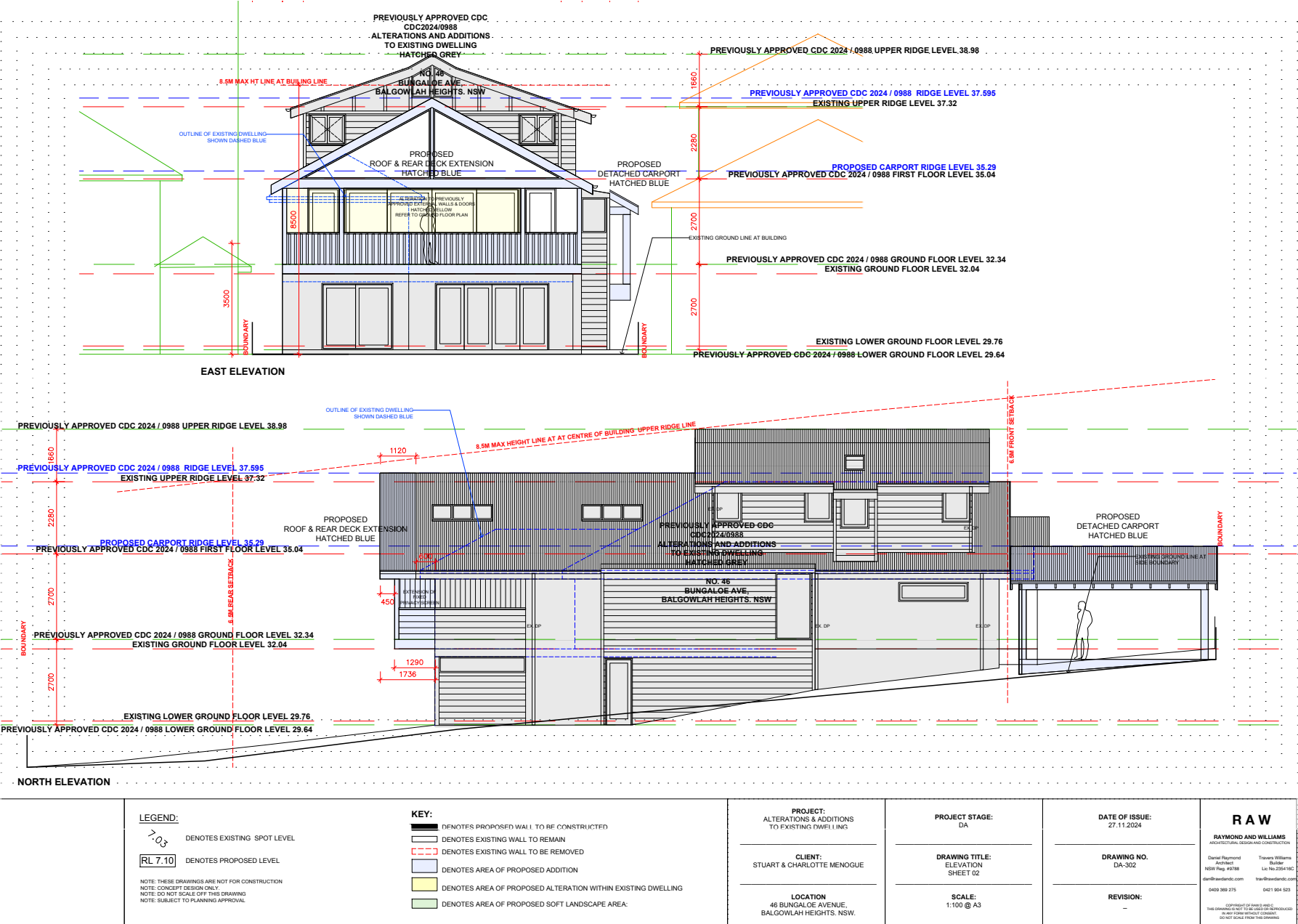


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ELEVATION SHEET 01 1:50 @ A1 OR 1:100 @ A3

LEGEND: 7.03 DENOTES EXISTING SPOT LEVEL RL 7.10 DENOTES PROPOSED LEVEL NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION NOTE: CONCEPT DESIGN ONLY NOTE: DO NOT SCALE OFF THIS DRAWING NOTE: SUBJECT TO PLANNING APPROVAL	KEY: - DENOTES PROPOSED WALL TO BE CONSTRUCTED - DENOTES EXISTING WALL TO REMAIN - DENOTES EXISTING WALL TO BE REMOVED - DENOTES AREA OF PROPOSED ADDITION - DENOTES AREA OF PROPOSED ALTERATION WITHIN EXISTING DWELLING - DENOTES AREA OF PROPOSED SOFT LANDSCAPE AREA PREVIOUSLY APPROVED CDC 2024 / 0988 LOWER GROUND FLOOR LEVEL 29.64	PROJECT: ALTERATIONS & ADDITIONS TO EXISTING DWELLING CLIENT: STUART & CHARLOTTE MENOGUE LOCATION 46 BUNGALOE AVE BALGOWLAH HEIGHTS, NSW.	PROJECT STAGE: DA DRAWING TITLE: ELEVATIONS SHEET 01 SCALE: 1:100 @ A3	DATE OF ISSUE: 04.11.2024 DRAWING NO. DA-300 REVISION: -	RAW RAYMOND AND WILLIAMS ARCHITECTURAL, ENGINEERING & CONSTRUCTION David Raymond Architect 1600 Hwy 99B darr@rawdw.com raw@rawdw.com Teresa Williams Builder Lvl No. 2554-102 twill@rawdw.com 0403 369 375 0401 904 523 CONFORMANCE OF DRAWING THIS DRAWING IS NOT TO BE REPRODUCED OR ANY PART THEREOF WITHOUT THE WRITTEN PERMISSION OF RAW
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Vaughan Milligan Development Consulting Pty Ltd

APPENDIX 1
CLAUSE 4.6 – FLOOR SPACE RATIO
(Clause 4.4 MLEP 2013)

Prepared February 2025

Vaughan Milligan Development Consulting Pty Ltd

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

46 BUNGALOE STREET, BALGOWLAH

**FOR THE PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO
AN EXISTING DWELLING**

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

For: Proposed construction of alterations and additions to an existing dwelling
At: 46 Bungaloe Street, Balgowlah
Owner: Stuart & Charlotte Menogue
Applicant: Stuart & Charlotte Menogue
C/- RAW Architectural Design & Construction

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum floor space ratio development standard as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

This submission has been prepared to address the provisions within Section 35B of the Environmental Planning and Assessment Regulation 2021, and as discussed within this Written Request, will demonstrate the grounds on which the proposal considers the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013.

The proposed development including the proposed minor alterations and the approved Complying Development additions therefore result in a variation from the control of 45.55m² or 21.95%.

It is noted that the Council's Manly Development Control Plan 2013 Amendment 14 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is less than minimum required lot size under Council's LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 500m² and when calculated against this required lot size, the permissible floor area is 225m². The proposed development will present a total floor area of 253m² or a FSR of 0.53:1 or when assessed against the Lot Size control of 500m², will see a marginal reduction in the extent of the non-compliance to 28m² or 12.4%.

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2.0 Authority to vary a Development Standard

In September 2023, the NSW Government published amendments to Clause 4.6 of the Standard Instrument which change the operation of the clause across all local environmental plans, including the Pittwater LEP. The changes came into force on 1 November 2023.

The principal change is the omission of subclauses 4.6(3)-(5) and (7) in the Standard Instrument Principal Local Environmental Plan.

The following changes have been made as a result of this:

- Clause 4.6(3) was amended such that the requirement to 'consider' a written request has been changed with an express requirement that the consent authority 'be satisfied that the applicant has demonstrated' that compliance with the development standard is unreasonable or unnecessary.
- Clause 4.6(4)(a)(ii) was amended such that the requirement that the consent authority must be satisfied that the proposed development in the public interest has been removed.
- Clause 4.6(4)(b) & 5 amended such that the requirement for concurrence from the Planning Secretary has been removed.

The objectives of clause 4.6 of the LEP, as amended, seek to recognise that in the particular circumstances of this case strict application of development standards may be unreasonable or unnecessary. The clause provides objectives and a means by which a variation to the development standard can be achieved as outlined below:

Clause 4.6 Exception to development standard

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

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

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

(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—

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- (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.

Note—

The [Environmental Planning and Assessment Regulation 2021](#) requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

- (4) The consent authority must keep a record of its assessment carried out under subclause (3).

- (5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not include all of these zones.

- (7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (caa) clause 5.5.
- (ca) clause 6.15,
- (cb) a development standard on land to which clause 6.19 applies.

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3.0 Background

Clause 4.4 restricts the maximum floor space area control within this area of the Balgowlah locality and refers to the floor space ratio noted within the *"Floor Space Ratio Map."*

The relevant maximum floor space control in this locality is 0.45:1 or for this site with an area of 461m², the maximum gross floor area is 207.45m² and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The site and the existing dwelling currently the subject of an approved Complying Development Certificate which permits a maximum floor space of 253m² or a floor space ratio is 0.55:1.

The proposed works which are the subject of this application will see a reduction the gross floor area as a result of the demolition of a portion of the ground floor level with a reduction in the GFA to 245m² or a floor space ratio of 0.53:1.

The proposed development including the proposed minor alterations and the approved Complying Development additions therefore result in a variation from the control of 37.55m² or 18.1%.

The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is clause 4.4 of MLEP a development standard?

- (a) The definition of "development standard" in clause 1.4 of the EP&A Act means standard is fixed in respect of an aspect of a development and include:

"(d) the cubic content of floor space of a building."

- (b) Clause 4.4 relates to floor space of a building. Accordingly, clause 4.4 is a development standard.

4.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.

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5.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

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

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

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

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

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

Clause 4.6(2) of MLEP provides:

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

Clause 4.4 (the FSR development standard) 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:*

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(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 FSR development standard pursuant to clause 4.4 of MLEP which specifies an FSR of 0.45:1, largely as a consequence of the Complying Development approval which provides for additional floor area for the dwelling to a total of 253m² or 0.55:1. The subject application will see a minor reduction in the total gross floor area to 245m² or 0.53: 1 to.

This Written Request is provided for abundant caution as the works do not increase the approved floor space and the works will maintain a compatible bulk and scale to that approved by way of the Complying Development Certificate.

As approved GFA is not unreasonable in bulk and scale and by being located towards the rear of the first floor level of the dwelling, will not contribute to the building presenting a significant bulk and scale or one which is out of context with the surrounding dwellings, 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) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation.

Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

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6.0 The Nature and Extent of the Variation

- 6.1 This request seeks a variation to the FSR development standard contained in clause 4.4 of MLEP.
- 6.2 Clause 4.4 of MLEP specifies an allowable gross floor area for a site in this part of Balgowlah of 0.45:1 or for this site, the allowable gross floor area is 207.1m².
- 6.3 The subject site has an area of 461m².
- 6.4 The proposal has a calculable gross floor area of 253m² or FSR of 0.53:1.
- 6.5 The total non-compliance with the FSR control is 45.55² or 21.95%, which is a breach to the control.
- 6.6 When assessed against a minimum lot area of 500m², the proposal presents an FSR of 0.506:1, which represents a reduced extent of non-compliance to 28m² or 12.4%.

7.0 Relevant Caselaw

- 7.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:
 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

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21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
 22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*
- 7.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:
1. Is clause 4.4 of MLEP a development standard?
 2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
 3. Is the consent authority satisfied that the proposed development will be consistent with the objectives of clause 4.4 and the objectives for development for in the R2 zone?

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8.0. Request for Variation

8.1 Is compliance with clause 4.4 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in Wehbe.
- (b) The first way in Wehbe is to establish that the objectives of the standard are achieved.
- (c) Each objective of the FSR standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The objective of Clause 4.4(1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The proposal provides for alterations and additions to an existing dwelling which are intended to provide for a development outcome that benefits the surrounding neighbours by maintaining a compatible bulk and scale and preserving existing view sharing opportunities.

The compatible building form with a low profile roof and earthy external finishes are considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade, together with the retention of the existing side setbacks at the street elevation and complementary external finishes will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing style of single dwelling housing within the locality and as such, will not be a visually dominant element in 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 proposal will not see the loss of any significant vegetation. The built footprint of the existing dwelling remains largely unchanged and is therefore not considered to result in any adverse effects on the scenic qualities of the foreshore.

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

The site is considered to be sufficient to provide for the proposed works, with the dimensions of the lot to be unchanged.

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The proposal will retain an appropriate area of soft landscaping, and the site will maintain an appropriate balance between the landscaping and the built form.

On the basis that the proposal maintains an acceptable level of landscaped area, the site is considered to maintain an appropriate balance between the site's landscaping and the built form.

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

The proposed works are wholly contained within the site and will not result in any adverse impacts for any adjoining land.

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

The site is not located within a business zone and by providing for the construction of alterations and additions to an existing dwelling, is not contrary to the viability of any local business activity.

8.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied*

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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]

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

The low pitch roof form further introduces modulation and architectural relief to the building's facade, which further distributes any sense of visual bulk.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed alterations and additions introduce modulation and architectural relief to the building's façade and by locating the new works at the rear of the first floor level, the proposal will not see any substantial change to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).
- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Bungaloe Street which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new works which exceed the gross floor area control and FSR standard of 0.45:1 are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning

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grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

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.

8.3 Is the proposed development consistent with the objectives of clause 4.4 and the objectives of the R2 Low Density Residential zone?

- (a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.
- (b) Each of the objectives of the R2 Low Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that *"The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone"*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the compatible form of the proposed additions which see a minor reduction in the total gross floor area, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the R2 Low Density Residential Zone for the following reasons:

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

As found in *Nessdee*, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

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The R2 Low Density Residential Zone contemplates low density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed alterations and additions to an existing dwelling which will provide for an appropriate level of amenity and in a form, and respect the predominant bulk and scale of the surrounding dwellings.

The development will see a minor reduction in the total gross floor area of the building which has been approved to 253m² or 0.55:1 by way of a Complying Development approval.

The subject proposal will see a minor reduction in the total floor area to 245m² or 0.53:1. The proposal will not exceed the existing overall ridge height of the dwelling, and will see a reduction in the general bulk and scale in comparison to the previously approved development.

The non-compliance, which results from the extent of the existing floor areas and the provision of new additional floor area to meet the requirements of the owners will improve the amenity for the buildings' owners by providing new living spaces in a form which complements the architectural style and scale of the surrounding development.

The compatible form and scale of the alterations and additions will meet the housing needs of the community within a single dwelling house which is a permissible use in this low-density residential zone.

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

The subject proposal relates to a residential dwelling and this provision is therefore not relevant.

The proposed alterations and additions will not see any adverse impacts on the views enjoyed by neighbouring properties.

The works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in Bungaloe Street from the surrounding private properties will be largely maintained.

8.4 Has the Council considered the matters in clause 4.6(5) of MLEP?

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

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- (b) As the proposed development complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

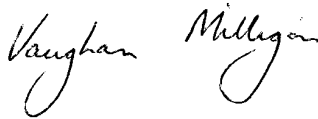
9.0 Conclusion

This development proposes reduction in the approved total floor area for the development, which has been achieved through a Complying Development Approval from 253m² to 245m².

The departure from the floor space ratio standard in this locality of 0.45:1 will be 45.55m² or 21.95%.

For the reasons outlined in this Written Request, we are of the view that the proposal is consistent with the objectives of the development standard.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



VAUGHAN MILLIGAN
Town Planner