AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

Notice is hereby given that a meeting of the Northern Beaches Local Planning Panel will be held via Teleconference on

WEDNESDAY 7 OCTOBER 2026

Beginning at 12:00pm for the purpose of considering and determining matters included in this agenda.

Adam Richardson
Acting Executive Manager Development Assessment

Quorum

A quorum is three Panel members.

Conflict of Interest

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

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ACKNOWLEDGEMENT OF COUNTRY

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

1 APOLOGIES AND DECLARATIONS OF INTEREST

Nil

2 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF THE NORTHERN BEACHES LOCAL PLANNING PANEL MEETING HELD ON 16 SEPTEMBER 2026

RECOMMENDATION

The Panel notes that the Minutes of the Northern Beaches Local Planning Panel Meeting held on 16 September 2026 were adopted by the Chairperson and have been posted on Council's website.

3 CATEGORY 3 APPLICATIONS

Nil

4 PUBLIC MEETING ITEMS

Nil

5 NON-PUBLIC MEETING ITEMS

ITEM 5.1 DA2026/0795 - 14 CABARITA ROAD AVALON BEACH - CONSTRUCTION OF AN INCLINATOR, RETAINING WALLS, ASSOCIATED LANDSCAPING WORKS AND ALTERATIONS AND ADDITIONS TO AN EXISTING CABANA

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the non-numerical development standard prescribed under Clause 7.8 Limited development on foreshore area 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 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.

The Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2026/0795 for Construction of an inclinator, retaining walls, associated landscaping works and alterations and additions to an existing cabana at Lot 4 DP 17704 & Lot LIC 553320, 14 Cabarita Road AVALON BEACH NSW 2107 subject to the conditions set out in the Assessment Report.

Reporting manager:	Executive Manager Development Assessment
Attachments:	1. Assessment Report [**5.1.1** - 53 pages] 2. Site Plans & Elevations [**5.1.2** - 3 pages] 3. Clause 4.6 [**5.1.3** - 32 pages]

northern beaches council

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2026/0795

Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 4 DP 17704, 14 Cabarita Road AVALON BEACH NSW 2107 Lot LIC 553320, 14 Cabarita Road AVALON BEACH NSW 2107
Proposed Development:	Construction of an inclinator, retaining walls, associated landscaping works and alterations and additions to an existing cabana
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Applicant:	Gordon Oneill

Application Lodged:	20/06/2026
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	06/07/2026 to 20/07/2026
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	7.8 Limited development on foreshore area
Recommendation:	Approval

Estimated Cost of Works:	$ 600,600.00

EXECUTIVE SUMMARY

This development application seeks consent for the construction of an inclinator, retaining walls, associated landscaping works and alterations and additions to an existing cabana.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposed works extending into the foreshore area, thereby resulting in a variation to the non-numerical development standard prescribed under Clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental

Plan 2014 (PLEP 2014).

A portion of the proposed inclinator extends into the foreshore area, along with a portion of the roof eave of the cabana and a series of retaining walls. The application is accompanied by a written Clause 4.6 variation request to justify the contravention of the development standard. The Clause 4.6 advances environmental planning grounds which seeks to justify the proposal on the basis of the context of surrounding development which is characterised by structures in the foreshore including inclinators and terraced gardens with retaining walls. Consequently, the cabana roof eave presents a very minor encroachment that will not be readily visible from the waterway or surrounding properties. Additionally, the proposed inclinator is compatible with the design and siting of surrounding inclinators and the proposed retaining walls provide a stepped terraced rear yard that improves the current landscape.

The application has been publicly exhibited from 6 July 2026 to 20 July 2026 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Northern Beaches Community Participation Plan. One submission was received during this period raising minor privacy concerns.

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 NBLPP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of the following works:

- Demolition of the existing cabana and construction of a new cabana with a green roof.
- Demolition of the existing rear retaining walls and construction of new retaining walls on the cabana level, lower lawn area, garden terrace, lookout level and pool area.
- Installation of an inclinator extending from the dwelling house to the swimming pool area.
- New fencing and landscaping works.

Application History

Additional information was requested in relation to foreshore area and side setbacks and amended plans and a Clause 4.6 request were submitted in response. As the amendments did not cause a greater environmental impact than the plans originally notified, the application was not required to be re-notified in accordance with Council's Community Participation Plan.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;

- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

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 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways
Pittwater 21 Development Control Plan - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 4 DP 17704 , 14 Cabarita Road AVALON BEACH NSW 2107 Lot LIC 553320 , 14 Cabarita Road AVALON BEACH NSW 2107

Detailed Site Description:	The subject site consists of one (1) allotment located on the north-eastern side of Cabarita Road. The subject site is legally identified as Lot 4 in Deposited Plan 17704, No. 14 Cabarita Road, Avalon Beach. It is an irregularly shaped allotment, which progressively widens from 12.19m at the front boundary to 17.055m at the rear boundary. The site has an area of 619.7m² (based on submitted survey plans) and contains a very steep front-to rear slope of approximately 20.0m (as measured from the front boundary to the top of the seawall at the rear of the site. The subject site currently contains a three storey detached dwelling which is situated towards the front of the site. The rear of the property includes a cabana and swimming pool amongst other landscaped and paved spaces within terraced areas that are created by large retaining walls. There is also a jetty that extends from the seawall at the rear of the site into the Pittwater waterway. The site is located within the C4 Environmental Living zone pursuant to the Pittwater Local Environmental Plan 2014. The rear boundary adjoins a W1 Natural Waterways zone. **Detailed Description of Adjoining/Surrounding Development** Development on surrounding sites consists predominately of detached multi-storey dwelling houses and associated structures (i.e. outbuildings, garages, swimming pools, jetties, etc.). The local subdivision pattern mostly follows the topography and local road reserve.

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:

- **JC2/0097/96** - Development Application for Construction of a ramp, pontoon and berthing area. Approved 19 September 1996.
- **BC0046/16** - Building Certificate - A berthing area, timber pontoon, ramp and two stabilising piles. Certificate issued 16 June 2016.
- **N0208/16** - Development Application for Relocation of berthing area and addition of three mooring piles. Approved 6 September 2016.
- **N0409/16** - Development Application for Additions and alterations to existing dwelling. Approved 23 February 2017.
- **DA2019/0786** - Development Application for Alterations and additions to a dwelling house. Approved 28 August 2019.
- **Mod2025/0350** - Modification of Development Consent N0409/16 granted for Additions and alterations to existing dwelling. Approved 7 November 2025.

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	See detailed assessment under "DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS" below.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to foreshore area and side setbacks. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the significant 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 Matters for Consideration	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

Draft Northern Beaches Local Environmental Plan (Draft LEP)

Definition(s): *dwelling house means a building containing only one dwelling*

Land Use Zone: C4 Environmental Living

Permissible or Prohibited: Permissible

Additional Permitted used for particular land – Refer to Schedule 1: Not applicable

A detailed assessment against the proposed numerical provisions and development standards has not been undertaken as part of this report. However, broad consideration has been given to the Draft LEP, and the proposal is consistent with its relevant aims and objectives.

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 06/07/2026 to 20/07/2026 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:**
Ms Susan Mary Holliday	16 Cabarita Road AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- ***Privacy***

  The submission requests that a privacy screen is installed on the south-eastern side of the outdoor bath to ensure privacy for 16 Cabarita Road. The submission also requests that the

new besser brick wall adjoining the existing swimming pool is a minimum 1.8 metres high to provide privacy between this pool and the existing pool at 16 Cabarita Road.

Comment:

Amended plans have been provided deleting the outdoor bath. Given the proximity of the existing swimming pool on the subject site to the existing swimming pool and inclinator at 16 Cabarita Road, it is reasonable for the proposed wall to be of a height to provide appropriate screening. A condition is recommended requiring this wall to be a minimum 1.8 metres high for privacy screening and similar to that of a boundary fence.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	***Referral completed - conditions recommended*** The proposed development works are to the rear of the site, including installation of an inclinator, replacement cabana with an outdoor bath, new retaining walls and associated landscape works. Landscape Referral raise no concerns with the proposed development, noting that landscape area is increased but is below the Pittwater DCP requirements, and this matter shall be assessed and determined by the Assessing Planning Officer. Arboricultural Impact Assessment: All trees within the property and within adjoining properties are assessed as suitable for retention and recommendations are provided for tree protection measures. Any works (excavation or construction) near trees shall be subject to imposed conditions. Landscape Plan: The plan is conceptual without any quantification of new planting works and conditions shall be imposed for delivery of a suitable landscape setting.
NECC (Bushland and Biodiversity)	***Referral completed - conditions recommended*** The comments in this referral relate to the following applicable controls and provisions: • Pittwater LEP Clause 7.6 Biodiversity Protection • Pittwater DCP Clause B4.7 Pittwater Spotted Gum Forest Endangered Ecological Community • SEPP (Resilience and Hazards) 2021 - Coastal Environment Area The proposal would take place in previously disturbed areas of the site and will not require the removal of any prescribed trees or vegetation. An arboricultural impact assessment has been submitted with the application and confirms that trees outside of the property boundary that could be impacted by the proposal could still be retained if adequate tree protection protocols are followed. Conditions are recommended.

Internal Referral Body	Comments
NECC (Coast and Catchments)	The proposed development is for construction of an inclinator, retaining walls, associated landscaping works and alterations and additions to an existing cabana. Officer comments: This application was assessed in consideration of: · Supplied plans and reports; · *Coastal Management Act 2016*; · *State Environmental Planning Policy (Resilience & Hazards) 2021* (sections 2.10, 2.11 & 2.12); · Relevant LEP and DCP sections of the *Pittwater Local Environmental Plan 2014* (LEP)and *Pittwater 21 Development Control Plan 2014* (DCP). The application is generally consistent with relevant planning controls. ***Coastal Management Act 2016*** The subject site is located 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 section 3 of the *Coastal Management Act 2016*. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Giddis Drafting Services dated June 2026 the proposed development does generally comply with the objectives of the *Coastal Management Act 2016* with respect to matters related to coastal processes and hazards. As such the application is generally consistent with the objects of the *Coastal Management Act 2016*. This referral has not assessed the compliance of the proposed development, for any potential impact on the scenic value of the area in accordance with the objectives of section 3(a) of the *Coastal Management Act 2016* that relate to scenic impact. Assessment of compliance with section 3(a) of the *Coastal Management Act 2016* will be by the development assessment officer assessing this development application. ***State Environmental Planning Policy (Resilience & Hazards) 2021*** The subject site is located on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the *State Environmental Planning Policy (Resilience & Hazards) 2021*. Hence, section 2.10, section 2.11 and section 2.12 of the *State Environmental Planning Policy (Resilience & Hazards) 2021* apply to the proposed development. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report the DA satisfies requirements under section 2.10, section 2.11 and section 2.12 of the *State Environmental Planning Policy (Resilience & Hazards) 2021.* Comment: As such, it is considered that the application generally complies with the requirements of the *State Environmental Planning Policy*

Internal Referral Body	Comments
	(Resilience & Hazards) 2021. **Pittwater LEP 2014 and Pittwater 21 DCP** Estuarine Risk Management The subject site is also identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the *Estuarine Risk Management Policy for Development in Pittwater* (Appendix 7, Pittwater 21 DCP), the relevant section B3.7 Estuarine Hazard Controls in Pittwater 21 DCP will apply to any proposed development of the site. In accordance with the *Pittwater Estuary Mapping of Sea Level Rise Impacts Study* (2015), a base estuarine planning level (EPL) of RL (reduced level - AHD) 2.66 m AHD would apply at the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.07 m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report, the ground floor level for the proposed additions and alterations is above the applicable EPL of 2.66 m AHD for the site. The proposed development is therefore able to satisfy the relevant estuarine risk management requirements of Pittwater 21 DCP.
NECC (Riparian Lands and Creeks)	***Referral completed - no conditions required*** The Catchment Team has reviewed the proposal and raises no objection from a Creek and Riparian perspective.

External Referral Body	Comments
External - Ausgrid - Section 4.31 of SEPP (Planning Systems) 2021 Development near electricity infrastructure - s4.31 (of SEPP) 2021	***Referral completed - conditions recommended*** In accordance with Clause 4.31 of SEPP (Planning Systems) 2021, 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.

External Referral Body	Comments
Aboriginal Heritage Office	***Referral completed - conditions recommended*** Reference is made to the proposed development at the above location and to Aboriginal cultural heritage. The area has been subject to previous disturbance, and the potential of intact, unrecorded Aboriginal objects being present is considered low. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. **Unexpected Finds / Stop Work Clause** It should be noted that under the National Parks and Wildlife Act 1974, all Aboriginal objects are protected, whether recorded or not. If any suspected Aboriginal objects, cultural materials, or human remains are uncovered during works: 1. All work must cease immediately in the vicinity of the find. 2. The area must be made safe and protected from further disturbance. 3. The Aboriginal Heritage Office must be contacted as soon as practicable for advice. 4. If the material is confirmed as Aboriginal, Heritage NSW and the relevant Aboriginal Land Council must be notified in accordance with section 89A of the Act, and works must not recommence until appropriate authorisation is provided. If human remains are uncovered during construction or earthworks: 1. All works must cease immediately in the vicinity of the find. 2. The area must be secured and protected from further disturbance. 3. NSW Police must be contacted immediately, in accordance with statutory requirements. 4. Works must not recommence unless authorised by NSW Police and relevant authorities.

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. A1849805 dated 4 June 2026).

Where relevant, the embodied emissions have been quantified in the above BASIX Certificate.

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

SEPP (Resilience and Hazards) 2021

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

Division 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.

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

Comment
The proposed development consists of the construction of a cabana, inclinator, retaining walls and landscaping works. The proposed retaining walls replace the existing dilapidated retaining walls providing improved structural support. The proposed cabana and inclinator are sited within existing

disturbed areas and will not cause adverse impacts on the coastal environment. As such, the proposed development is designed, sited and will be managed to avoid adverse impacts on the above matters.

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 adverse
      ii) impact referred to in paragraph (a), or
      iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
      if that impact cannot be minimised—the development will be managed to mitigate that impact, and
   c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment
The proposed development is sensitively designed to maintain the existing character and amenity of the foreshore area. The proposed development is designed, sited and will be managed to avoid adverse impacts on the above matters.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

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

Comment
The proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	4.4m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	No
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The underlying objectives of the C4 Environmental Living zone

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

  Comment:

  The proposed development consists of a new cabana, inclinator and retaining walls which are sited within existing disturbed areas. This ensures the proposal provides low-impact residential

development.

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

  Comment:

  The proposed development has been reviewed and supported by the Aboriginal Heritage Office, Council's Landscape Team, Coast and Catchments Team, Bushland and Biodiversity Team and Riparian Lands and Creeks Team. The proposed inclinator has been sensitively designed and responds to the character of surrounding inclinators and other foreshore development. As such, the proposed development does not have an adverse effect on the special ecological, scientific or aesthetic values of the area.

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

  Comment:

  The proposed development is ancillary to the existing dwelling house and maintains the low density and scale of the area. The proposal does not require excessive excavation and responds well to the existing landform and landscape.

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

  Comment:

  The proposed development does not impact on riparian and foreshore vegetation and wildlife corridors.

4.6 Exceptions to development standards

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

Development standard: Clause 7.8 Limited development on foreshore area
Requirement: Foreshore Building Line (criteria as specified under Clause 7.8)
Proposed: A portion of the inclinator, retaining walls and cabana roof eave extend into the foreshore area
Percentage of variation: N/A - non-numerical development standard



Figure 1 *- Plan showing the FBL dotted orange and extent of proposed works within the foreshore area*

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 7.8 Limited development on foreshore area 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 7.8 Limited development on foreshore area is unreasonable or unnecessary in the circumstances of this application for the following reasons:

The objectives of Clause 7.8 Limited development on foreshore area are achieved notwithstanding the non-compliance as below.

(a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,

Comment:
It is noted that no works are proposed seaward of the Mean High Water Mark (MHWM) and the works are predominantly sited within existing developed areas. The existing swimming pool is retained with a new retaining wall proposed replacing the existing wall with a more stepped terraced appearance to the waterway. This improves the visual appearance from the foreshore and is compatible with surrounding foreshore development. The proposed inclinator is consistent with the siting and length of surrounding inclinators and does not detract from the significance or amenity of the area. Similarly, the portion of the cabana roof eave that encroaches the FBL is very minor and does not touch the ground. Therefore, this element will be indiscernible when viewed from the foreshore and surrounding properties.

(b) to ensure continuous public access along the foreshore area and to the waterway.

Comment:
There is already limited public access along the existing foreshore area adjoining the subject site whereby the proposal will not cause any impact. As stated above, the proposed works are sited entirely above the MHWM within private property and therefore, do not impact on any public land.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

- *Site Constraints and the Established Condition of the Land - The site falls approximately 20m from the front boundary to the top of the seawall. The rear yard within which the works that are the subject of this request are located falls steeply across a series of existing terraced levels. Terracing and retaining structures are an unavoidable response to that topography, and the terraced form of the rear yard is the established condition of the land. The works within the foreshore area are located generally in the position of existing paving and existing retaining walls. All existing trees within the foreshore area are retained, and no vegetation removal is proposed within the foreshore area.*
- *Retaining Walls - The proposed retaining walls replace the existing retaining structures which are in poor condition. Refusal of the works within the foreshore area would leave those failing structures in place, which would be a poorer environmental outcome for the foreshore than the development proposed. The proposed retaining walls stabilise the rear yard and reduce the potential for erosion, soil loss and sediment movement. The retaining walls are constructed in sandstone-look block and include screen planting to soften their appearance. The additional retaining wall within the foreshore area divides the height of the existing wall across two lower structures, thereby creating a garden bed between them. That configuration reduces the apparent bulk and visual prominence of the retaining structures when viewed from the waterway, allows for additional planting to soften their appearance, and provides more accessible levelled garden areas across the steep gradient of the rear yard. The works within the foreshore area are accordingly principally replacement and stabilisation works to existing retaining structures, with the additional wall delivering an improved landscape and visual outcome rather than increasing the impact of development within the foreshore area.*
- *Inclinator - The proposed inclinator provides safe and equitable access between the Pool Area and the Upper Lawn Level of the steeply sloping site, supporting the continued use and occupation of the dwelling and rear yard by its occupants. The inclinator is not proposed merely as an additional or optional means of access. Given the gradient of the land and the extent of stair access*

otherwise required between the terraced levels, it provides a necessary and practical means of safe access for the occupants of the dwelling, one of whom has a mobility impairment which significantly limits their ability to negotiate the existing stairs. The inclinator is a narrow, low-profile and lightweight structure having an overall maximum height ranging from 1.7m to 2.4m to the top of the handrail and from 0.59m to 1.2m to the platform. It is aligned with the natural slope and presents no enclosed bulk. The inclinator is located, for the greater part of its length, in the same alignment as the existing stairs along the north-western side boundary, ensuring that the works occur within an already disturbed and utilised access corridor. This minimises additional site disturbance and avoids the need for further excavation or removal of vegetation. The portion of the inclinator located within the foreshore area is the section that negotiates the steepest change of level on the site and serves the lower terraced levels of the rear yard, being the Garden Terrace and the Pool Area. The extent of the encroachment is accordingly the minimum necessary for the structure to perform its function, and is no greater than that of the existing inclinators upon the neighbouring allotments. The proposed inclinator is consistent in design and siting with the established pattern of development in the locality, inclinators being a common feature of the steeply sloping waterfront allotments along this part of Cabarita Road, being Nos. 2, 4, 6, 8, 12, 16, 18, 20, 24 and 28. Each of those inclinator structures extend within the foreshore area, and each descends to the pool or lowest terraced level of the respective allotment. The appearance of the proposed structure, when viewed from both the waterway and adjacent foreshore areas, will accordingly be compatible with the surrounding area for the purposes of Clause 7.8(3)(b), and the proposal does not introduce a form of development that is foreign to the foreshore setting. An inclinator was approved at No. 16 Cabarita Road under DA2020/0776, on the allotment which directly adjoins the subject site. The lower of those lifts extends into the foreshore area. This inclinator was found to be a form of waterway access stairs and permissible by Clause 7.8. While this application acknowledges that the same permissibility finding cannot be relied upon in this case, the merits and reasoning for supporting the physical structure remain the same. That is, the zone objectives, the objectives of the standard, and the visual relationship with the Pittwater waterway are the same for this application as for 16 Cabarita Road. The distinction between the proposed inclinator and those inclinators already approved and constructed within the foreshore area in this locality is accordingly one of legal characterisation rather than of environmental impact. The change in Council's approach alters the pathway by which development consent may be granted for a structure of this kind. It does not alter the physical form of the structure, its siting, its length, or its effect upon natural foreshore processes, upon the significance and amenity of the foreshore area, or upon opportunities for continuous public access along the foreshore and to the waterway. The findings previously made by the consent authority as to each of those matters remain applicable and are available upon the present facts.

- *Cabana - The cabana replaces an existing cabana in substantially the same position on the Cabana Level. The encroachment into the foreshore area is confined to a cantilevered roof element of approximately 2.8m², elevated above ground level and involving no excavation, footing or ground disturbance within the foreshore area.*

The applicant's request is well-founded and provides a comprehensive argument demonstrating there are sufficient environmental planning grounds to justify the variation. The request effectively highlights how inclinators are a common form of development on surrounding properties as a consequence of the slope and demonstrates that there is a clear pattern of inclinators extending into the foreshore area on the eastern side of Cabarita Road. As shown in Figure 2 below provided in the applicant's Clause 4.6 request, there is an abundance of inclinators within the foreshore area on the eastern side of Cabarita Road and the proposed inclinator will be indiscernible.



Figure 2 *- Aerial image showing the approximate lengths of the inclinators at Nos. 2 to 28 Cabarita Road, noting that the neighbouring inclinator structures extend within the foreshore and that the proposed inclinator is consistent with the length of the surrounding inclinators (provided by the applicant)*

It is evident that the proposed inclinator is compatible with the design and siting of surrounding inclinators, particularly those on the adjoining properties 12 and 16 Cabarita Road. Of note, the Clause 4.6 request acknowledges that the inclinator at 16 Cabarita Road was found to be a form of waterway access stairs and permissible under Clause 7.8, however, this finding is no longer available. Notwithstanding, it is agreed that the merits of that proposal relating to the nature of the physical structure and its visual relationship with the waterway can also be applied to the proposed inclinator. Figure 3 below demonstrates the siting and trajectory of the inclinator as it navigates the slope. That is, the existing inclinator at 16 Cabarita Road hugs the north-western side boundary and traverses a series of terraced retaining walls then terminating at the pool area. The proposal essentially replicates this situation with the inclinator traversing the new stepped retaining walls and also terminates at the pool area. Evidently, the proposed inclinator is undoubtedly compatible with surrounding development and will not detract from the visual amenity of the foreshore.



Figure 3 *- Site photo of existing inclinator at 16 Cabarita Road*

The proposed inclinator provides a means of safe and equitable access to traverse the steep topography. The proposed inclinator is sited over the existing paved steps and is sited close to ground level without the need for excessive excavation. Notably, the existing foreshore area is already developed with a swimming pool, retaining walls, paving and steps as shown in Figures 4 and 5 below. Consequently, the proposed inclinator does not impact on any existing trees or require the removal of vegetation. It's location adjoining the north-western boundary results in the inclinator appearing tucked against the boundary fencing and becomes visually recessive when viewed from the waterway. Evidently, the addition of the inclinator within the foreshore area does not significantly disturb any undeveloped natural areas or alter the character of the foreshore.



Figure 4 *- Site photo of existing steps where proposed inclinator is located*



***Figure 5** - Site photo of existing steps where proposed inclinator is located*

Similarly, the proposed retaining walls replace the existing dilapidated walls and provide a more stepped terrace form to the rear yard. This will improve the visual presentation to the foreshore particularly adjoining the swimming pool as the existing high wall is replaced with two smaller stepped walls. Additionally, the element of the cabana that encroaches the FBL is a very minor portion of the roof eave and does not contain any parts that touch the ground. Evidently, the Clause 4.6 request has adequately demonstrated that the objectives of Clause 7.8 are achieved notwithstanding the non-compliance and has advanced sufficient environmental planning grounds to justify the variation.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 7.8 Limited development on foreshore area for the following reasons:

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

Public Interest:

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

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances regarding the context of existing surrounding development, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

7.1 Acid sulfate soils

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

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

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

The proposed development does not involve significant excavation and the watertable is not likely to be lowered below 1 metre AHD. As such, no further assessment is required.

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 subject site does not contain any known relics.

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

Comment: The proposal has been reviewed and supported by Council's Riparian Lands and Creeks Team.

(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 proposal has been reviewed and supported by the Aboriginal Heritage Office

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

aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.6 Biodiversity protection

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

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

Comment:

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

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

Comment:

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

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

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

Comment:

The development has been assessed by Council's Bushland and Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed

to any significant adverse environmental impact.

7.7 Geotechnical hazards

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

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

Comment:
The proposed development is supported by a Geotechnical Report that demonstrates all geotechnical risks have been taken into account. The recommendations of this report have been included in the recommended conditions of consent.

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

Comment:
Conditions are recommended ensuring stormwater is appropriately managed.

(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:
It is considered 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, subject to recommended conditions.

7.8 Limited development on foreshore area

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

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*

- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:
The proposed development includes new stairs connecting the alfresco, lower lawn and the pool area that extend into the foreshore area. These stairs are permitted in the foreshore area as waterway access stairs.

The proposed development also includes the construction of an inclinator that is partially located within the foreshore area. Such development does not constitute waterway access stairs, therefore contravening Clause 7.8. Additionally, the proposal includes a series of new retaining walls replacing the existing retaining walls providing a more terraced rear yard. The proposed retaining walls are located within the foreshore area and are not expressly permitted by this clause and therefore contravene Clause 7.8. Lastly, a portion of the roof eave of the cabana encroaches the foreshore area and is not expressly permitted by this clause. These works are however, found to be acceptable for the reasons as set out in 'Clause 4.6 Exceptions to development standards' elsewhere in this report.

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

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

Comment:
The proposed development is consistent with the objectives of the C4 Environmental Living zone.
The appearance of the proposed development is compatible with the surrounding area. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not

impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

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

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	As Existing	N/A	No Change
Rear building line	FBL	Below	N/A	**No**
Side building line	NW - 2.5m	Alfresco: 1.3m Cabana: 5.4m	48% -	**No** Yes
	SE - 1m	Cabana: 0.9m-1.6m	10%	**No**
Building envelope	NW - 3.5m	Within envelope	-	Yes
	SE - 3.5m	Within envelope	-	Yes
Landscaped area	60%	40.4% (250.6m2)	32.7%	**No (but increased)**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
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
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	No	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.15 Fences - General	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D1.21 Masterplan - Careel Bay	Yes	Yes

Detailed Assessment

C1.14 Separately Accessible Structures

This control requires the following:

A separately accessible structure may be permitted for use as a studio, home office, workshop area, rumpus room and the like, provided that:

- it is ancillary to a dwelling;
- it is not designed for separate habitation and does not contain any cooking facilities.

Comment:
The applicant has clarified that the cabana is not intended to be used as a secondary dwelling and remains ancillary to the principal dwelling. The proposed cabana contains an office, bathroom, living area and wetbar. The proposed cabana does not contain a kitchen or any cooking facilities and does not contain laundry facilities. As such, it is evident that the proposed cabana is not to be used for separate habitation and a condition is recommended enforcing this.

C1.19 Incline Passenger Lifts and Stairways

Detailed Assessment

This control stipulates the following:

Incline passenger lifts and stairways shall:

- *be designed and located so they do not involve excessive excavation, or the removal of natural rock or trees, and*
- *be erected as near as possible to the ground level (existing) of the site, and shall not involve the erection of high piers or visible retaining structures, and*
- *be located and designed to minimise the effects of noise from the motor and overlooking of adjoining dwellings, and*
- *be painted to blend in with surrounding vegetation and screened by landscaping and*
- *be set back two (2) metres from the side boundary to the outer face of the carriage*
- *be located wholly on private land, and*
- *have a privacy screen where there is a direct view within 4.5m to a window of a habitable room of another dwelling.*

Comment

The proposed inclinator does not require excessive excavation and is sited close to ground level with a maximum rail height of 0.6 metres with minimal excavation or the erection of high piers. The proposed inclinator is predominantly sited over the existing paved steps and does not require the removal of any natural rock or trees. The siting of the existing dwelling and its relationship to the side boundaries limits the opportunities for siting the proposed inclintor with a compliant setback. The proposed inclinator is sited adjoining the northern side boundary where there is more space available and is setback 0.2 metres from the boundary. While non-compliant with the 2.0 metre requirement, the proposed inclinator does not cause adverse acoustic or visual privacy impacts on adjoining properties. As discussed under Clause 4.6 of this report, inclinators are a common form of development on the eastern side of Cabarita Road and are present on majority of properties including the adjoining northern and southern properties 12 and 16 Cabarita Road. Given the proximity to the adjoining dwelling, a condition is recommended requiring a privacy screen to be installed on the outer north-western side of the inclinator carriage to mitigate privacy impacts. Additionally, a condition is recommended requiring the inclinator to be of a medium to dark colour range to blend in with the natural environment. A condition is also recommended requiring noise levels of the inclinator not to exceed 60dB(A) when measured one metre from any adjoining premises.

Merit Consideration

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

- *Incline passenger lifts and stairways that cause minimal visual and acoustic disturbance to the environment and neighbours. (En, S)*

  Comment:

  The proposed inclinator is designed and sited to respond to existing surrounding development and will not cause unreasonable visual and acoustic impacts.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit.

D1.9 Side and rear building line

Description of non-compliance

This control requires development to be setback 2.5m from one side boundary and 1.0m from the other side boundary. For this assessment, the 2.5m requirement has been applied to the north-western side boundary and the 1.0m requirement applied to the south-eastern side boundary.

On the north-western side, the proposed cabana is setback 5.4m which complies and the alfresco is setback 1.2m which does not comply. On the south-eastern side, the proposed cabana is setback 0.9m-1.6m which is partly non-compliant.

Comment:

The outcomes of the control are:

- *To achieve the desired future character of the Locality. (S)*
- *The bulk and scale of the built form is minimised. (En, S)*
- *Equitable preservation of views and vistas to and/or from public/private places. (S)*
- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*
- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)*
- *Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)*
- *Flexibility in the siting of buildings and access. (En, S)*
- *Vegetation is retained and enhanced to visually reduce the built form. (En)*
- *A landscaped buffer between commercial and residential zones is achieved.(En,S)*

The proposed development consists of ancillary works to the dwelling house that maintain the low density residential nature of the area and achieve the desired future character of the Locality. The proposed alfresco consists of a paved external area sited at ground level that does not generate bulk and scale. The proposed cabana is modest in size with a green roof and lawn area above that softens the structure particularly when viewed from the waterway. The proposed cabana and alfresco are also sited over an existing paved area and therefore do not result in a reduction of soft surface. Additionally, there is existing dense vegetation along the

south-eastern side boundary which ensures a reasonable level of privacy and amenity between the adjoining property. Flexibility is warranted in this circumstance given the character and context of surrounding development in which it is common to have separate detached structures due to the topography and depth of the site.

The development is consistent with the outcomes of the control and is acceptable on merit.

D1.14 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

This control requires at least 60% of the site area to be landscaped. Provided the outcomes of this control are achieved, the following may be permitted on the landscaped proportion of the site:

i) impervious areas less than 1 metre in width (e.g. pathways and the like);

ii) for single dwellings on land zoned R2 Low Density Residential, R3 Medium Density Residential or C4 Environmental Living, up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only (e.g. roofed or unroofed pergolas, paved private open space, patios, pathways and uncovered decks no higher than 1 metre above ground level (existing)).

The proposal provides 40.4% (250.6m^2) landscaped area including the above variation which does not comply.

Comment:

The outcomes of the control are:

- *Achieve the desired future character of the Locality. (S)*
- *The bulk and scale of the built form is minimised. (En, S)*
- *A reasonable level of amenity and solar access is provided and maintained. (En, S)*
- *Vegetation is retained and enhanced to visually reduce the built form. (En)*
- *Conservation of natural vegetation and biodiversity. (En)*
- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)*
- *To preserve and enhance the rural and bushland character of the area. (En, S)*
- *Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.(En, S)*

It is noted that the proposal provides an increase in the quantum of landscaped area to what was previously approved under Mod2025/0263 which was 37.6% (233.2m^2). This increase is facilitated by the incorporation of a green roof atop of the proposed cabana which also serves as an upper lawn area. A condition is recommended requiring appropriate soil depths, waterproofing and drainage to ensure the success of the green roof. The proposed green roof and lawn area add visual softening which help to conceal the appearance of the cabana and ensure it is integrated into the landscape. Additionally, the proposal includes a series of retaining walls providing a terraced rear yard. This includes additional walls particularly adjoining the existing swimming pool to break up the existing larger wall shown in Figure 6 below. The proposal replaces

this wall with two new walls lower in height which step down in accordance with the slope and enhance the landscape setting. As such, the proposal provides an improvement and rationalises the landscape setting at the rear of the site.



Figure 6 - Existing retaining walls at the rear of the site

The development is consistent with the outcomes of the control and is acceptable on merit.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of $6,006 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $600,600.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- 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 7.8 Limited development on foreshore area 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 construction of an inclinator, retaining walls, associated landscaping works and alterations and additions to an existing cabana has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation to Clause 7.8 Limited development on foreshore area under the PLEP 2014.

The Clause 4.6 advances environmental planning grounds which seeks to justify the proposal on the basis of the context of surrounding development which is characterised by structures in the foreshore including inclinators and terraced gardens with retaining walls. Consequently, the cabana roof eave presents a very minor encroachment that will not be readily visible from the waterway or surrounding properties. Additionally, the proposed inclinator is compatible with the design and siting of surrounding inclinators and the proposed retaining walls provide a stepped terraced rear yard that improves the current landscape.

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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2026/0795 for Construction of an inclinator, retaining walls, associated landscaping works and alterations and additions to an existing cabana on land at Lot 4 DP 17704, 14 Cabarita Road, AVALON BEACH, Lot LIC 553320, 14 Cabarita Road, AVALON 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**

01	C	Site Plan/ Site Analysis Plan	GIDDIS Drafting Services	19 August 2026
02	C	Site Plan 1:100	GIDDIS Drafting Services	19 August 2026
03	C	Demolition Plan & Waste Management	GIDDIS Drafting Services	19 August 2026
04	C	North Elevation	GIDDIS Drafting Services	19 August 2026
05	E	Long Section W	GIDDIS Drafting Services	19 August 2026
06	D	Long Section W	GIDDIS Drafting Services	19 August 2026
07	B	East Elevation	GIDDIS Drafting Services	19 August 2026
08	E	Cabana Floor Plan	GIDDIS Drafting Services	19 August 2026
10	B	Landscaping Plan	GIDDIS Drafting Services	19 August 2026
11	B	Landscaping Planting Plan	GIDDIS Drafting Services	19 August 2026

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate	A1849805	Mrs Deborah Partos	4 June 2026
Arboricultural Impact Assessment	v3	Arbor Express	11 June 2026
Geotechnical Assessment	1	AscentGeo Geotechnical Consulting	29 May 2026
Waste Management Plan	-	-	-

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	Undated

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

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

3. **No Approval for Secondary Dwelling**
No approval is granted or implied under this Development Consent for the use of the cabana for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed.

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

4. **No Approval for Works to the Boundary Fence**
No approval is granted under this Development Consent for any works to or replacement of the existing boundary fence.

Reason: To ensure compliance with the relevant Local Environmental Plan.

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

6. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

i) Long Service Levy - Payment should be made to Service NSW (online or in person) or directly to the Long Service Corporation. 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) If proposing to undertake works on Council property, a “Road Opening Permit” will need to be applied for from Council, and all applicable charges paid, prior to the commencement of any work. 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. Please contact Road Restorations Team at Council if unsure whether a Road Opening Permit is required.

(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

7. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of $6,006.00 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 $600,600.00.

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

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

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

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

8. **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

9. **On Slab Landscape Works**
Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections.

The following soil depths are required to support landscaping:

i) 300mm for groundcovers, perennials, grasses and lawn

ii) 600mm for shrubs

iii) 1m for small trees

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

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

- The new retaining wall adjoining the south-eastern side of the swimming pool area is to be a minimum 1.8 metres high from the pool paving.
- A full height privacy screen is to be installed on the outer north-western side of the inclinator carriage. The privacy screen can either be solid, opaque glazing fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- The inclinator (including the rail, carriage, balustrades and landings) is to be finished in a medium to dark colour range of earthy tones/materials.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

11. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

13. **Estuarine Hazard Design Requirements**
All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise risks associated with coastal hazards for development in an estuarine environment.

14. **Estuarine Planning Level Requirements**
An Estuarine Planning Level (EPL) of 2.66 m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

1. All structural elements below 2.66 m AHD shall be of flood compatible materials;
2. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.66 m AHD or waterproofed to this level; and
3. The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.66 m AHD.
4. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.66 m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.66 m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure vulnerable components of the development are built at the appropriate level.

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

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

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

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **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.

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

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

DURING BUILDING WORK

19. **Tree and vegetation protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees within the site, including trees and vegetation nominated for retention on the approved reports and 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 AS4970-2025 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment, and in particular sections 5, 6 and appendix D
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 of AS4970-2025 Protection of trees on development sites
ix) the activities listed in section 4 of AS4970-2025 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:
c) The arboricultural works listed in a) and b) are undertaken as complaint to AS4970-2025 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment and/or Project Arborist as applicable.

Reason: Tree and vegetation protection.

20. **Wildlife Protection**
If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

21. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

22. **Handling of asbestos during demolition**
While demolition work is being carried out, any work involving the removal of asbestos must

comply with the following requirements:

- Only an asbestos removal contractor who holds the required class of Asbestos Licence issued by SafeWork NSW must carry out the removal, handling and disposal of any asbestos material;
- Asbestos waste in any form must be disposed of at a waste facility licensed by the NSW Environment Protection Authority to accept asbestos waste; and
- Any asbestos waste load over 100kg (including asbestos contaminated soil) or 10m² or more of asbestos sheeting must be registered with the EPA online reporting tool WasteLocate.

Reason: To ensure that the removal of asbestos is undertaken safely and professionally.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

24. **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.

25. **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.

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

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

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

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

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

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

27. **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.

28. **Stockpiling materials**
During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

29. **Pollution Control**
All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

30. **Landscape completion**
Landscape works are to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:
a) landscape works are to be contained within the legal property boundaries

b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan, unless otherwise imposed by conditions,
c) one locally native tree consistent with the Pittwater Spotted Gum Forest Endangered Ecological Community shall be planted at the rear of the property at a minimum pre-ordered planting size of 75 litres; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; located either within garden bed or within a prepared bed within lawn; and positioned 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
d) mass planting shall be installed at minimum 1metre intervals for shrubs of a minimum 200mm container size at planting, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting, and shall be in garden beds prepared with a suitable free draining soil mix and minimum 75mm depth of mulch
e) new planting is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants.

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

Reason: Environmental amenity.

31. **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 Pittwater Spotted Gum Forest Endangered Ecological Community species list.

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.

32. **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.

33. **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.

34. **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.

35. **Waste Disposal Verification Statement**
On completion of demolition work:

- a signed statement must be submitted to the Certifier verifying that demolition work, and any recycling of materials, was undertaken in accordance with the waste management plan approved under this consent, and
- if the demolition work involved the removal of asbestos, an asbestos clearance certificate issued by a suitably qualified person, must be submitted to the Certifier within 14 days of completion of the demolition work.

Reason: To provide for the submission of a statement verifying that demolition waste management and recycling has been undertaken in accordance with the approved waste management plan.

36. **Swimming Pool Requirements (existing pool modified by works)**
The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:
(i) Swimming Pools Act 1992;
(ii) Swimming Pools Amendment Act 2009
(iii) Swimming Pools Regulation 2018;
(iv) Australian Standard AS1926 Swimming Pool Safety;
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools;
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
(b) A warning sign stating 'YOUNG CHILDREN SHOULD BE ACTIVELY SUPERVISED WHEN USING THIS POOL' has been installed.
(c) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life.

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

37. **Landscape maintenance**
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they

are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

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

Reason: To maintain local environmental amenity.

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

Reason: To protect wildlife habitat.

39. **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.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

41. **Inclinator Noise**
The inclinator must be installed and operated at all times so as not to cause 'offensive noise', this being that noise levels produced will not exceed 60dB(A) when measured one metre from any adjoining premises.

Reason: To ensure compliance and the maintenance of residential amenity.

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

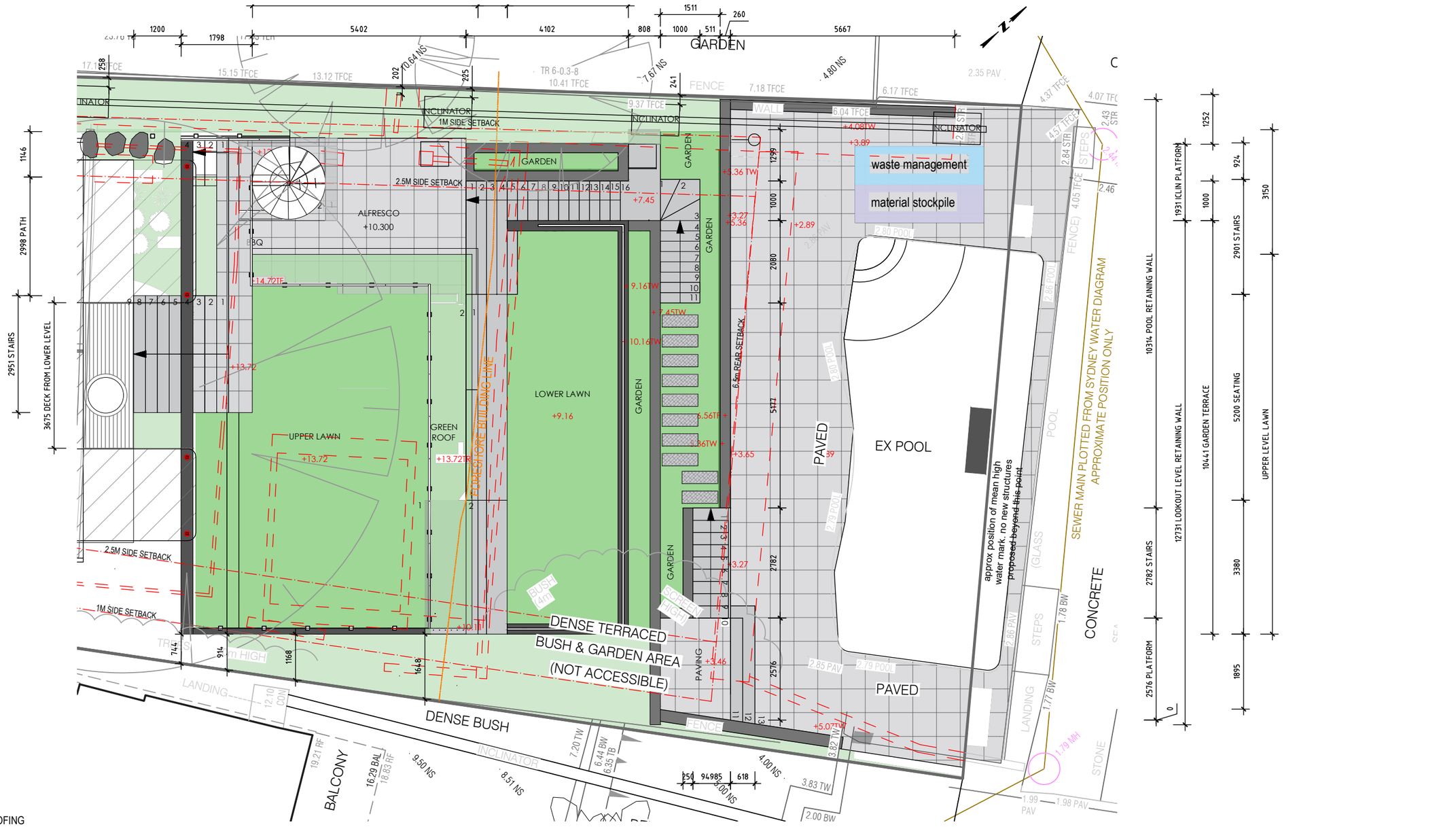
Signed



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

Kye Miles, Acting Development Assessment Manager

Peter Robinson, Executive Manager Development Assessment



LEGEND

OC	OPAQUE GLASING
CG	CLEAR GLASING
CR	COLOURBOND ROOFING
TF	TIMBER FLOORING TO OWNERS SPEC
TB	TIMBER BATTEN SCREEN
TF	TIMBER FRAME - PAINT FINISH
HW	HARDWOOD
FC	FIBRE CEMENT SHEET - PAINT FINISH
SC	SHADOWCLAD CLADDING - PAINT FINISH
WB	WEATHERBOARD CLADDING
BW	BLOCK WORK
CN	CONCRETE
PV	PAVERS TO OWNERS SPEC
TL	TILE TO OWNERS SPEC
	INSTALL SMOKE ALARM IN ACCORD WITH AS 3786

APPROVED DA PAN548322
NEW INTERNAL WALLS
DEMOLISH
NEW FLOOR AREA
NEW WORK
DA APPROVED DEMOLISION

NOTES:
1. THE BUILDER IS TO CHECK AND CONFIRM ALL NECESSARY DIMENSIONS AND LEVELS ON SITE PRIOR TO ORDERING MATERIALS AND COMMENCING CONSTRUCTION. DO NOT SCALE OFF THE DRAWING.
2. SHOULD ANY DEVELOPMENT OR CONSTRUCTION OCCUR ON OR NEAR BOUNDARIES THE BOUNDARIES SHOULD BE CLEARLY MARKED ON SITE BY THE REGISTERED LAND SURVEYORS.
3. THE PROPOSED WORKS HAVE BEEN DESIGNED SO THAT WHEN CONSTRUCTED THEY CAN COMPLY WITH THE BCA.

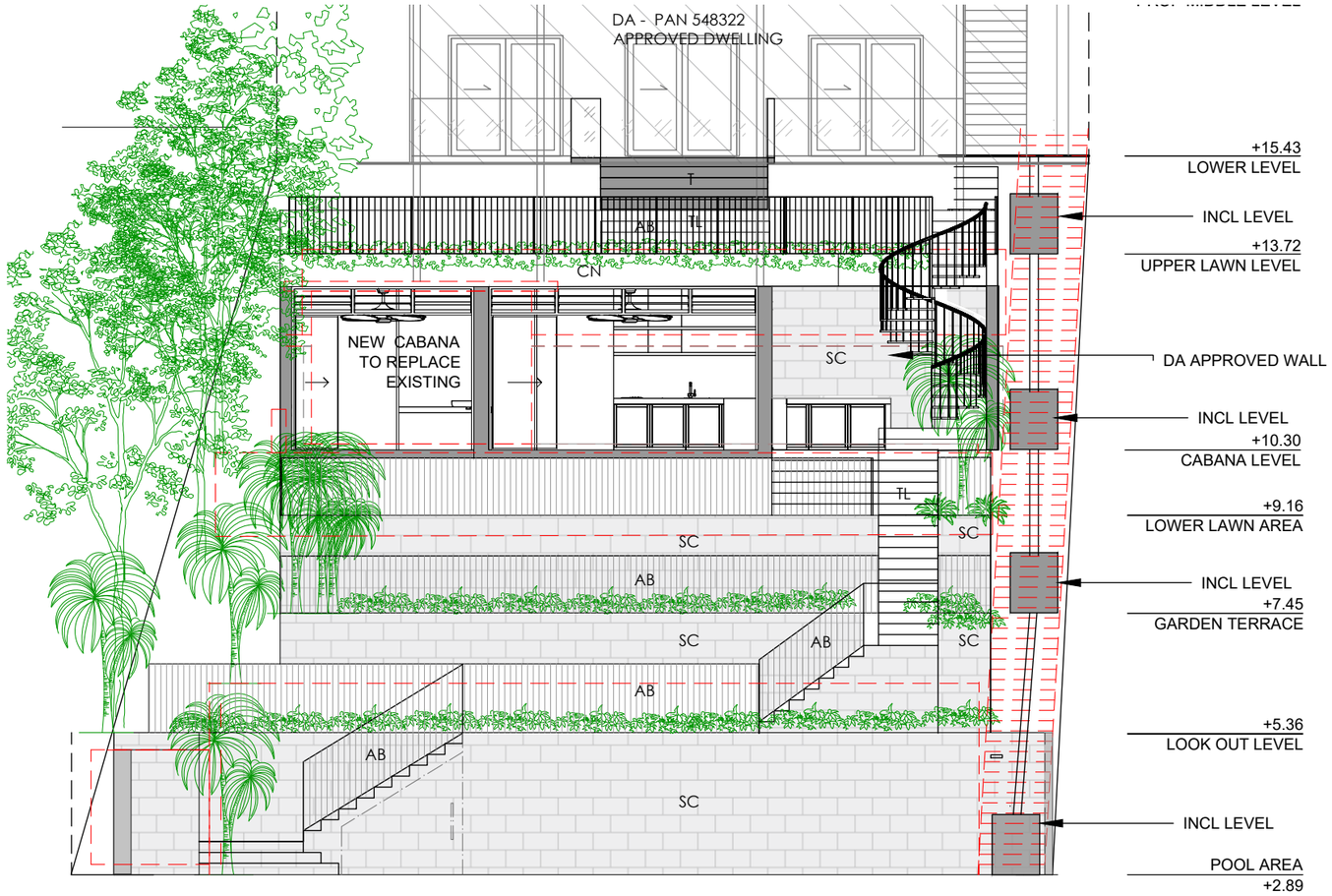
CLIENT
DAVINA WITHERS
14 CABARITA RD
AVALON

PROJECT
ALTERATIONS AND ADDITIONS TO DOUBLE STOREY WEATHERBOARD RESIDENCE

DRAWN BY:
DEBORAH PARTOS dpartos@giddis.com.au
GIDDIS DRAFTING SERVICES

DRAWING TITLE
SITE PLAN 1:100

STATUS	SCALE	DATE	DRAWN	DWG NO	REVISION
DA	1:100	19/08/26	DP	02	C



LEGEND

OC	OPAQUE GLASING
CG	CLEAR GLASING
CR	COLOURBOND ROOFING
T	TIMBER
TB	TIMBER BATTEN SCREEN
TF	TIMBER FRAME - PAINT FINISH
AB	ALUMINUM BALUSTRADE
FC	FIBRE CEMENT SHEET - PAINT FINISH
SC	SANDSTONE CLADDING OVER BLOCKWORK
WB	WEATHERBOARD CLADDING
BW	BLOCKWORK TO ENG DETAILS
CN	CONCRETE
PV	PAVERS TO OWNERS SPEC
TL	TILE TO OWNERS SPEC
	INSTALL SMOKE ALARM IN ACCORD WITH AS 3786

APPROVED DA PAN548322
NEW INTERNAL WALLS
DEMOLISH
NEW FLOOR AREA
NEW WORK
DA APPROVED DEMOLISION

NOTES:
1. THE BUILDER IS TO CHECK AND CONFIRM ALL NECESSARY DIMENSIONS AND LEVELS ON SITE PRIOR TO ORDERING MATERIALS AND COMMENCING CONSTRUCTION. DO NOT SCALE OFF THE DRAWING.
2. SHOULD ANY DEVELOPMENT OR CONSTRUCTION OCCUR ON OR NEAR BOUNDARIES THE BOUNDARIES SHOULD BE CLEARLY MARKED ON SITE BY THE REGISTERED LAND SURVEYORS.
3. THE PROPOSED WORKS HAVE BEEN DESIGNED SO THAT WHEN CONSTRUCTED THEY CAN COMPLY WITH THE BCA.

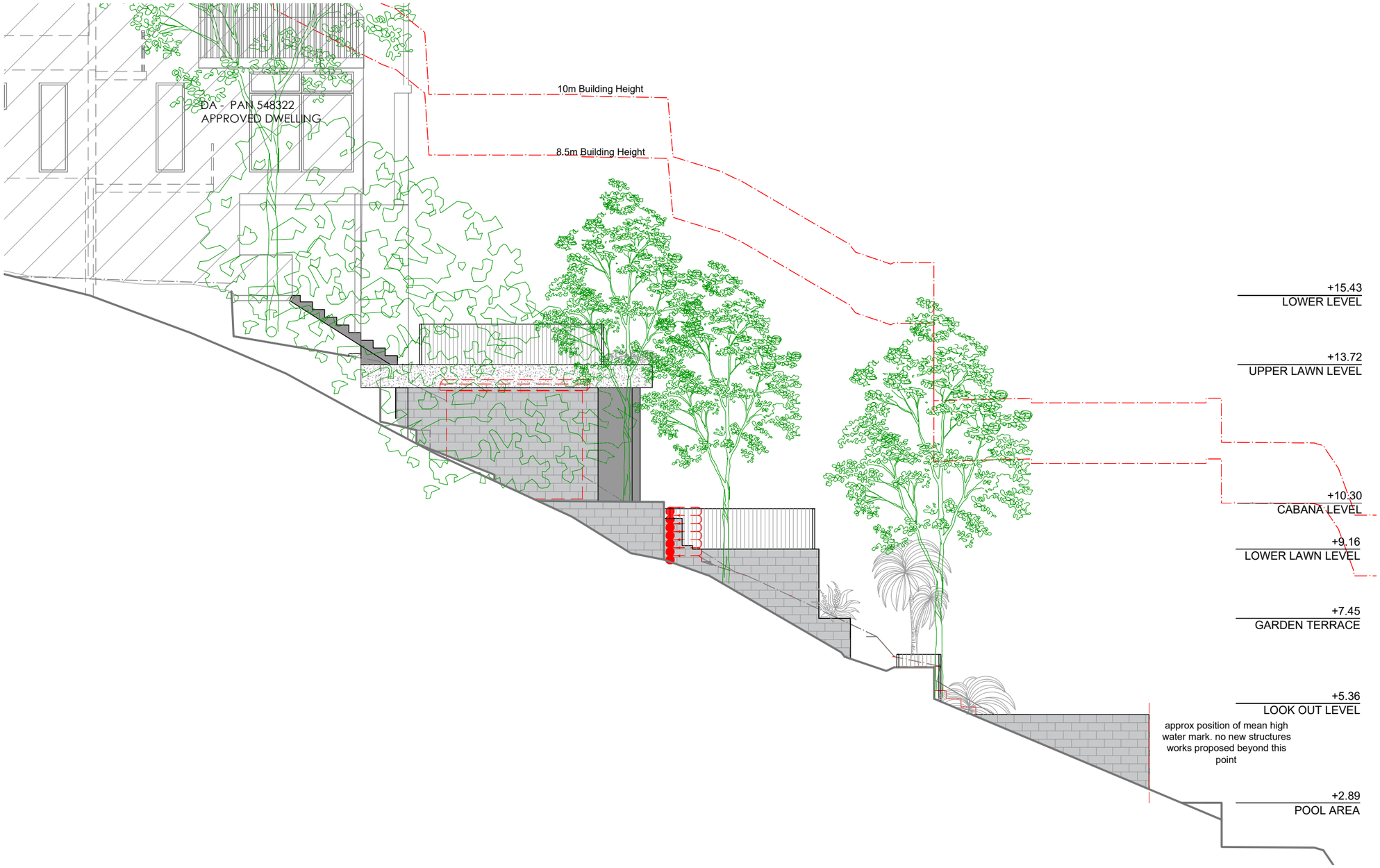
CLIENT
DAVINA WITHERS
14 CABARITA RD
AVALON

PROJECT
ALTERATIONS AND ADDITIONS TO MULTI STOREY WEATHERBOARD RESIDENCE

DRAWN BY:
DEBORAH PARTOS dpartos@giddis.com.au
GIDDIS DRAFTING SERVICES

DRAWING TITLE
NORTH ELEVATION

STATUS	SCALE	DATE	DRAWN	DWG NO	REVISION
DA	1:100	19/08/26	DP	04	C



LEGEND

OC	OPAQUE GLASING
CG	CLEAR GLASING
CR	COLOURBOND ROOFING
T	TIMBER
TB	TIMBER BATTEN SCREEN
TF	TIMBER FRAME - PAINT FINISH
AB	ALUMINUM BALUSTRADE
FC	FIBRE CEMENT SHEET - PAINT FINISH
SC	SANDSTONE CLADDING OVER BLOCKWORK
WB	WEATHERBOARD CLADDING
BW	BLOCKWORK TO ENG DETAILS
CN	CONCRETE
PV	PAVERS TO OWNERS SPEC
TL	TILE TO OWNERS SPEC
	INSTALL SMOKE ALARM IN ACCORD WITH AS 3786

APPROVED DA PAN548322
NEW INTERNAL WALLS
DEMOLISH
NEW FLOOR AREA
NEW WORK
DA APPROVED DEMOLISION

NOTES:
1. THE BUILDER IS TO CHECK AND CONFIRM ALL NECESSARY DIMENSIONS AND LEVELS ON SITE PRIOR TO ORDERING MATERIALS AND COMMENCING CONSTRUCTION. DO NOT SCALE OFF THE DRAWING.
2. SHOULD ANY DEVELOPMENT OR CONSTRUCTION OCCUR ON OR NEAR BOUNDARIES THE BOUNDARIES SHOULD BE CLEARLY MARKED ON SITE BY THE REGISTERED LAND SURVEYORS.
3. THE PROPOSED WORKS HAVE BEEN DESIGNED SO THAT WHEN CONSTRUCTED THEY CAN COMPLY WITH THE BCA.

CLIENT
DAVINA WITHERS
14 CABARITA RD
AVALON

PROJECT
ALTERATIONS AND ADDITIONS TO MULTI STOREY WEATHERBOARD RESIDENCE

DRAWN BY:
DEBORAH PARTOS dpartos@giddis.com.au
GIDDIS DRAFTING SERVICES

DRAWING TITLE
EAST ELEVATION

STATUS	SCALE	DATE	DRAWN	DWG NO	REVISION
DA	1:100	03/06/26	DP	07	B

Clare Findlay
Urban Planning Services
ABN:87788967399

Clause 4.6 Variation Request

Clause 7.8(2) (Limited Development on Foreshore Area) Pittwater Local Environmental Plan 2014

14 Cabarita Road, Avalon Beach

Construction of an inclinator, retaining walls, replacement cabana, and associated landscaping works

August 2026

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Urban Planning Services
ABN:87788967399

Clause 4.6 Variation Request

Clause 7.8(2) (Limited Development on Foreshore Area) Pittwater Local Environmental Plan 2014

14 Cabarita Road, Avalon Beach

Construction of an inclinator, retaining walls, replacement cabana, and associated landscaping works

On behalf of Gordon O'Neill

For submission to Northern Beaches Council

Prepared by Clare Findlay – Urban Planning Services

August 2026

Document Details	Report Prepared by	Signature	Sent to / Date
Draft Clause 4.6 Variation Request_Rev.1	Clare Findlay		6/08/2026
Final Clause 4.6 Variation Request	Clare Findlay		20/08/2026

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1. Introduction

This Clause 4.6 Variation Request has been prepared to accompany the development application (DA) for the construction of an inclinator, retaining walls, replacement cabana, and associated landscaping works at No. 14 Cabarita Road, Avalon Beach.

The site is identified as Lot 4 in DP 17704 and is located on the north-eastern side of Cabarita Road. The site is irregular in shape with a south-western front boundary of 12.19m and a north-eastern rear boundary of 17.055m. The site has an area of 619.7m^2.

The rear boundary of the site is the mean high water mark of Careel Bay by title, and adjoins land zoned W1 Natural Waterways. The site falls steeply from Cabarita Road to the waterway, a fall of approximately 20m as measured from the front boundary to the top of the seawall at the rear of the site.

The site is zoned C4 Environmental Living under the provisions of the Pittwater Local Environmental Plan 2014 (PLEP).

Part of the rear of the site is located seaward of the foreshore building line shown on the Foreshore Building Line Map to the PLEP, and is therefore within the "foreshore area" as defined in Clause 7.8(5) of the PLEP.

The proposed development includes the following works at the rear of the site:

- Demolition of the existing retaining walls at the rear of the site and construction of new sandstone-look block retaining walls on the Upper Lawn Level, Cabana Level, Lower Lawn Area, Garden Terrace, Lookout Level and Pool Area, together with a painted timber sleeper retaining wall and a painted block retaining wall at the Upper Lawn Level. The existing stone sea wall and retaining wall at the rear of the site, which extends below the mean high water mark, is retained and is not the subject of any works, and no works are proposed seaward of the mean high water mark.

- Construction of a new inclinator along the north-western side boundary connecting the Pool Area to the Upper Lawn Level, with intermediate platforms at the Garden Terrace Level and the Cabana Level, having an overall maximum height ranging from 1.7m to 2.4m to the top of the handrail and from 0.59m to 1.2m to the platform, as shown on the north-western side elevation. The inclinator extends to the Pool Area, being the lowest of the terraced levels within the rear yard, consistent in length and alignment with the existing inclinators upon the neighbouring allotments at Nos. 2 to 28 Cabarita Road and in partiluar with the inclinator approved at No. 16 Cabarita Road under DA2020/0776. The inclinator is located partly within the foreshore area.

- Demolition of the existing cabana and construction of a replacement cabana with a green roof on the Cabana Level, setback 0.75m to 1.648m from the south-eastern side boundary. The cabana comprises a living area with a wet bar, an office, a sauna, a

bathroom and a covered alfresco area. The roof structure of the cabana cantilevers to the north-east beyond the foreshore building line, such that the cabana is located partly within the foreshore area. The walls and slab of the cabana are located landward of the foreshore building line.

- Provision of landscaping, including palm trees, shrubs, groundcovers and lawn on the rear terraced garden levels and along the north-western side boundary below the proposed inclinator, together with a green roof and perimeter garden bed to the cabana.

- New natural stone paver stairs and landings with step lights and drop-down edges connecting the terraced levels within the rear yard, together with aluminium flat bar balustrades 1000mm in height.

- A new spotted gum deck, stairs and landing with step lights at the upper level, and new aluminium spiral stairs with a garden bed beneath connecting to the natural stone paved stairs.

- New fencing along the rear part of the north-western side boundary.

- Works to the existing Pool Area, including a new pool retaining wall, retaining walls replacing the existing retaining walls (other than the retained rear retaining wall referred to above), natural stone paving around the existing swimming pool, new natural stone entry stairs into the pool with waterline tiling and beadcrete, a concrete servery and planter, a level lawn and associated garden beds, and a freestanding shower to the garden.

- New pool safety fencing to the Pool Area, comprising an aluminium flat bar fence 1200mm in height with gate, the existing pool fence being otherwise retained.

The proposal does not involve any works below the mean high water mark, and does not involve any alteration to the existing retaining wall at the rear of the site which extends below that mark.

The proposal results in non-compliance with Clause 7.8(2) of the PLEP, which limits the purposes for which development consent may be granted for development on land in the foreshore area. As such, this Clause 4.6 Variation Request has been prepared in accordance with Clause 4.6 of the PLEP:

Clause 4.6 Exceptions to development standards
(1) The objectives of this clause are as follows—
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental

planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

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

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

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

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.

(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.

This Clause 4.6 Variation Request has been prepared in accordance with the 'Guide to Varying Development Standards' published by the NSW Department of Planning, Housing and Infrastructure. It is submitted in satisfaction of Section 35B of the Environmental Planning and Assessment Regulation 2021, which requires a development application that proposes to contravene a development standard to be accompanied by a written request setting out the grounds relied upon.

This Clause 4.6 Variation Request outlines the nature of the non-compliance with the development standard in Clause 7.8(2) of the PLEP and provides an assessment of the matters required to be demonstrated by Clause 4.6(3) of the PLEP.

This Clause 4.6 Variation Request demonstrates that compliance with the development standard in Clause 7.8(2) is unreasonable or unnecessary in the circumstances of the case, and establishes that there are sufficient environmental planning grounds to justify contravening the development standard, thereby satisfying Clause 4.6(3) of the PLEP.

Consistency with the objectives of Clause 7.8(1) and with the objectives of the C4 Environmental Living zone is addressed below as part of the demonstration that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

This Clause 4.6 Variation Request is provided in response to Council's request for further information dated 31 July 2026, which sought a written request under Clause 4.6 of the PLEP in respect of the contravention of Clause 7.8(2).

2. Development Standard to be Varied

The proposal seeks a variation to the development standard in Clause 7.8(2) of the PLEP. Clause 7.8(2) restricts the purposes for which development consent may be granted on land in the foreshore area, being the land between the foreshore building line and the mean high water mark as shown on the Foreshore Building Line Map. Refer to the extract of the Foreshore Building Line Map below.



Figure 1: Extract of the Foreshore Building Line Map

Clare Findlay
Urban Planning Services
ABN:87788967399

Clause 7.8 of the PLEP requires the following:

7.8 Limited development on foreshore area

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

(a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,

(b) to ensure continuous public access along the foreshore area and to the waterway.

(2) Development consent must not be granted for development on land in the foreshore area except for the following purposes—

(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,

(b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

(3) Development consent must not be granted under this clause unless the consent authority is satisfied that—

(a) the development will contribute to achieving the objectives for the zone in which the land is located, and

(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and

(c) the development will not cause environmental harm such as—

(i) pollution or siltation of the waterway, or

(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or

(iii) an adverse effect on drainage patterns, or

(iv) the removal or disturbance of remnant riparian vegetation, and

(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and

(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and

(f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and

(g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and

(h) sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change, have been considered.

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

(a) continuous public access to and along the foreshore through or adjacent to the proposed development,

(b) public access to link with existing or proposed open space,

(c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,

(d) public access to be located above mean high water mark,

(e) the reinforcing of the foreshore character and respect for existing environmental conditions.

(5) In this clause—

***foreshore area** means the land between the foreshore building line and the mean high water mark of the nearest natural waterbody shown on the Foreshore Building Line Map.*

foreshore building line *means the line shown as the foreshore building line on the Foreshore Building Line Map.*

2.1 Extent of the contravention

The foreshore building line traverses the rear yard of the site in a north-west to south-east direction, crossing the north-eastern part of the Cabana Level. The following components of the proposed development are located wholly or partly within the foreshore area:

- The proposed Lower Lawn and its associated retaining walls.
- The proposed stair runs and landings connecting the Cabana Level, Lower Lawn and Garden Terrace.
- The proposed Garden Terrace works and associated retaining walls.
- The proposed Lookout Level retaining wall and stairs.
- The proposed Pool Area works, comprising the pool retaining wall, the sandstone-look block retaining walls replacing the existing retaining walls, the natural stone paving around the existing swimming pool, the concrete servery and planter, the level lawn, and the associated garden beds and retaining walls.
- The proposed inclinator and its platforms, located along the north-western side boundary and connecting the Pool Area, the Garden Terrace Level, the Cabana Level and the Upper Lawn Level.
- The cantilevered roof structure to the replacement cabana.

The existing retaining wall at the rear of the site, which extends below the mean high water mark, is retained and is not the subject of any works. No works are proposed below the mean high water mark.

The proposed works to the dwelling curtilage, comprising the spotted gum deck, the spiral stair and the associated landscaping, the Upper Lawn and the works to the south-west of the cabana are located landward of the foreshore building line and are not affected by Clause 7.8(2).

Works permitted by Clause 7.8(2)(b)

Swimming pools and fences are purposes expressly listed in Clause 7.8(2)(b). Development consent may accordingly be granted for those components of the proposal which fall within those purposes, notwithstanding their location within the foreshore area, and no variation is sought in respect of them. Those components are the existing swimming pool and the works to it (being the new entry stairs, the waterline tile and beadcrete finishes and the natural stone coping wrapping down into the waterline), the pool safety fencing, and the timber lapped and capped fencing. They are not further addressed in this request.

Pool Area Works, Retaining Walls, Stairs and Landings (excluding works permitted by Clause 7.8(2)(b))

The proposed Pool Area works, retaining walls, stair runs and landings extend up to 7.8m seaward of the foreshore building line and occupy approximately 38m² of the foreshore area.

Inclinator

The proposed inclinator extends up to 12.3m seaward of the foreshore building line and occupies approximately 1.8m^2 of the foreshore area. Its length within the foreshore area is comparable to that of the existing inclinators upon the neighbouring allotments at Nos. 2 to 28 Cabarita Road. Refer to Figure 7 below.

Cabana

The replacement cabana is located predominantly landward of the foreshore building line. The roof structure of the cabana cantilevers to the north-east beyond that line, with the consequence that the cabana is a building located partly within the foreshore area. The cantilevered element is supported entirely from land landward of the foreshore building line, and no footing, column or other structural support for the cabana is founded within the foreshore area.

The cantilevered roof structure projects approximately 0.96m beyond the foreshore building line and over approximately 2.8m^2 of the foreshore area.

Refer to the extract of the Site Plan below.

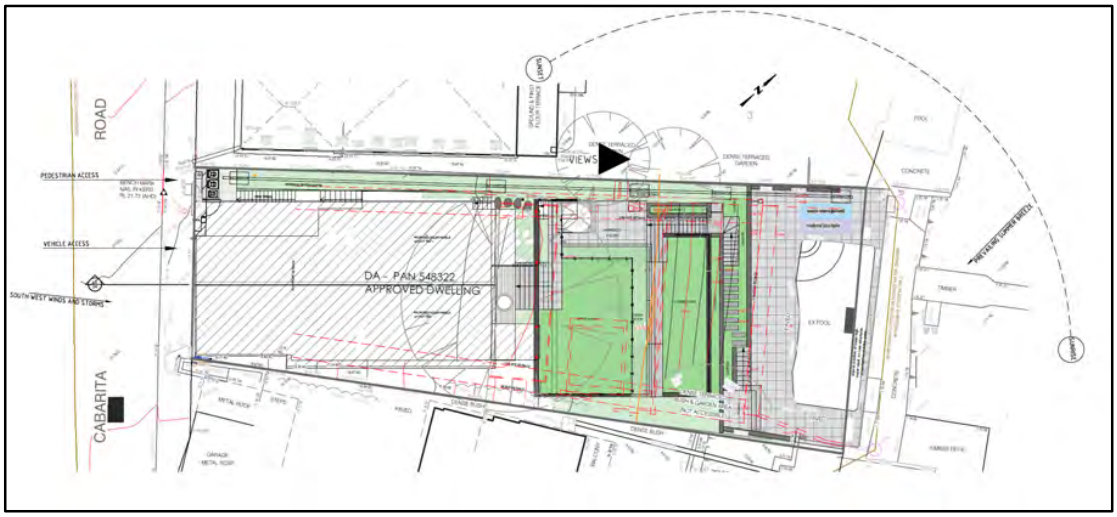


Figure 2: Extract of the Site Plan showing the components of the proposal located within the foreshore area and the balance of the proposed works located landward of the foreshore building line (Source: Giddis Drafting Services, Drawing 02, Revision C)

Clause 7.8(2) is not a numerical development standard, and the contravention is not capable of expression as a numerical or percentage variation. The extent of the departure is described instead by the maximum distance by which each component extends seaward of the foreshore building line and the area of the foreshore area occupied, as set out above.

2.2 The works are not for a purpose listed in Clause 7.8(2)(b)

Retaining Walls

The proposed retaining walls within the foreshore area are landscape retaining structures serving the terraced garden levels of the rear yard, being the Lower Lawn, Garden Terrace, Lookout Level and Pool Area. They are not “sea retaining walls” within the meaning of Clause 7.8(2)(b), which is directed to structures constructed at or near the mean high water mark for the purpose of retaining land against tidal or wave action.

The site is served by an existing stone sea wall on concrete located seaward of the north-eastern boundary, together with an existing retaining wall at the rear of the site which extends below the mean high water mark, and existing concrete and slanted walls, steps, a landing, a timber deck, a jetty, a ramp and a pontoon, as shown on the Survey Plan prepared by CMS Surveyors dated 18 May 2026 submitted with this DA. Those structures are located at or seaward of the mean high water mark and perform the sea-retaining function on this site. They are retained in their existing form and are not the subject of this development application.

The distinction between those structures and the retaining walls proposed by this application is one of function and location. The proposed walls are located landward of the mean high water mark, retain terraced garden levels within the rear yard, and are not exposed to, and perform no function in resisting, tidal or wave action. The presence on the site of structures

that do perform that function, which are retained unaltered, confirms that the proposed walls are not works of that character.

Inclinator

The proposed inclinator is a mechanical passenger conveyance running on a fixed track between the Pool Area and the Upper Lawn Level, with intermediate platforms at the Garden Terrace Level and the Cabana Level.

Council has previously granted development consent for inclinators within the foreshore area in this locality, including the inclinator approved on the adjoining site at No. 16 Cabarita Road under DA2020/0776, upon the basis that a structure of that kind constitutes “waterway access stairs” for the purposes of Clause 7.8(2)(b). Council has informally advised that the approach was founded upon legal advice which has since been superseded, and that inclinators are no longer considered as “waterway access stairs” within the meaning of that paragraph. In its letter dated 31 July 2026, Council has accordingly requested that a written request under Clause 4.6 accompany this DA in respect of the inclinator.

This Clause 4.6 Variation Request is submitted upon that basis. No reliance is placed upon the permissibility findings previously made by the consent authority in respect of the neighbouring allotments, and this request proceeds upon the conservative basis that development consent cannot be granted for the inclinator under Clause 7.8(2)(b).

Cabana

The replacement cabana is an outbuilding ancillary to the dwelling house, comprising a cabana, office, sauna and bathroom, with an alfresco area. The cantilevered roof structure that projects into the foreshore area forms part of that building.

Swimming Pool Works - Development Consent N0409/16

The operation of Clause 7.8(2)(b) on this land is illustrated by the swimming pool works approved under Development Consent N0409/16, which increased the area of the existing in-ground pool within the foreshore area from 86.7m^2 to 113m^2. Consent was capable of being granted for those works because a swimming pool is a purpose expressly listed in Clause 7.8(2)(b). The same characterisation applies to the pool works forming part of the current proposal, which are dealt with in Section 2.1 above and for which no variation is sought.

2.4 The works are not permitted by Clause 7.8(2)(a)

Existing Structures within the Foreshore Area

The proposal involves the demolition of the existing retaining walls at the rear of the site and the construction of new retaining walls, other than the existing retaining wall which extends below the mean high water mark, "Building" is defined in Section 1.4(1) of the EP&A Act to

include a structure or part of a structure, and the existing retaining walls are therefore an existing building partly within the foreshore area for the purposes of Clause 7.8(2)(a).

The Demolition Plan (Drawing 03) identifies the following existing structures within the foreshore area to be demolished: the copper log retaining walls, the rendered retaining wall to the Pool Area, the dilapidated copper log and rendered retaining wall to the south-eastern boundary, the existing stairs, and associated paving. The Landscaping Plan (Drawing 10) describes the proposed walls as sandstone-look block retaining walls to replace the existing walls, and describes the proposed inclinator as replacing existing stairs.

The comparison of footprints is made against the existing structures as approved under Development Consent N0409/16, as modified by MOD2025/0350, and not against the condition of the land prior to those consents. The existing retaining wall at the rear of the site which extends below the mean high water mark is retained, does not form part of the works the subject of this request, and is therefore excluded from that comparison.

Retaining Walls

The proposed retaining walls in the north-eastern part of the site extend a further 10.25m into the foreshore area and increase the footprint of the structures within the foreshore area by approximately 4.4m^2 when compared with the existing retaining walls and stairs to be demolished. On this basis, Clause 7.8(2)(a) does not authorise the grant of consent for those works.

Inclinator

The proposed inclinator replaces existing stairs within the foreshore area. To the extent that those stairs comprise an existing building for the purposes of Clause 7.8(2)(a), the proposed inclinator and its platforms result in the footprint of that structure extending further into the foreshore area, the inclinator extending to the Pool Area at the lowest terraced level of the rear yard. Accordingly, Clause 7.8(2)(a) does not authorise the grant of consent for the inclinator either.

Cabana

The proposal also involves the demolition of the existing cabana and the construction of a replacement cabana in substantially the same position on the Cabana Level. The existing cabana is located wholly landward of the foreshore building line, as shown on the Cabana Floor Plan Existing (Drawing 08). Clause 7.8(2)(a) applies only to an existing building wholly or partly in the foreshore area. As the existing cabana is not a building wholly or partly in the foreshore area, that paragraph has no application to the replacement cabana, and it does not authorise the grant of consent for it.

2.6 Matters not the subject of this request

Clauses 7.8(3) and 7.8(4) of the PLEP are not development standards varied by this request. Clause 7.8(3) imposes preconditions of which the consent authority must be satisfied before granting development consent under Clause 7.8, and Clause 7.8(4) prescribes matters which the consent authority must consider in deciding whether to grant consent for development in the foreshore area. Clause 4.6 does not relieve the consent authority of either obligation.

Each of the matters in Clauses 7.8(3)(a)–(h) and 7.8(4)(a)–(e) is addressed in the Statement of Environmental Effects submitted with this DA.

The Statement of Environmental Effects also addresses Chapter 2 of State Environmental Planning Policy (Resilience and Hazards) 2021, and in particular Sections 2.10 and 2.11, which require the consent authority to consider impacts upon coastal environmental values and natural coastal processes, and upon existing public open space and safe access to and along the foreshore. Those matters were assessed by the consent authority in the determination of MOD2025/0350.

3. Justification for Contravention of the Development Standard

This Clause 4.6 Variation Request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by Clause 4.6(3), of which there are two aspects. Both aspects are addressed below.

3.1 Clause 4.6(3)(a) — compliance with the development standard is unreasonable or unnecessary in the circumstances

5-Part Test

As outlined in the 'Guide to Varying Development Standards' published by the NSW Department of Planning, Housing and Infrastructure, the most common way of establishing whether compliance with the development standard is unreasonable or unnecessary is known as the '5-Part Test' (from the case of Wehbe v Pittwater Council [2007] NSWLEC 827).

The 5-Part Test is summarised as follows.

Compliance with the development standard is unreasonable or unnecessary if the:

1. ***objectives of the development standard are achieved notwithstanding the non-compliance***
2. *underlying objective or purpose is not relevant to the development*
3. *underlying objective or purpose would be defeated or thwarted if compliance was required*

4. *development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard*
5. *zoning of the land on which the development is proposed was unreasonable or inappropriate.*

An applicant only needs to satisfy at least one part of the 5-Part Test, not all 5 parts. The five ways identified in Wehbe are not exhaustive, and are directed only to the demonstration required by Clause 4.6(3)(a): Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

This Clause 4.6 Variation Request relies upon the first way, being that the objectives of the development standard in Clause 7.8 are achieved notwithstanding the non-compliance with Clause 7.8(2).

The demonstration under the first way is informed by the established pattern of development along this section of the foreshore. Inclinators are a characteristic feature of the steeply sloping waterfront allotments along this section of Cabarita Road. The inclinators at Nos. 2, 4, 6, 8, 12, 16, 18, 20, 24 and 28 Cabarita Road each extend within the foreshore area and descend to the pool or lowest terraced level of the respective allotment. The significance and amenity of the foreshore area in this locality, being the matters to which the objective in Clause 7.8(1)(a) is directed, are accordingly those of a foreshore in which structures of that kind are an established element. The proposed inclinator, being of comparable length, alignment, form and siting, is consistent with that pattern and does not introduce a form of development that is foreign to the foreshore setting. Refer to Figures 3 to 7 below and to the environmental planning grounds set out in Section 3.2 below.

Assessment — consistency with the objectives of the development standard

The objectives of the development standard are set out in Clause 7.8(1) of the PLEP. An assessment of the proposal against each objective is provided in Table 1 below.

Table 1: Objectives of Clause 7.8(1) of the PLEP – Assessment Table

Objectives of Clause 7.8(1) of the PLEP	Assessment
(a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area	The proposal is consistent with this objective as follows: • The works located within the foreshore area are situated wholly landward of the mean high water mark. No works are proposed below the mean high water mark, within the intertidal zone, or within any waterway. The existing retaining wall at the rear of the site which extends below the mean high water mark is retained unaltered. • The proposal does not involve any interference with tidal flow, wave action, littoral or sediment

	transport, or any other natural foreshore process. • The proposed retaining walls replace existing retaining structures in the same part of the site and will stabilise the terraced garden levels, thereby reducing the potential for soil loss and sediment movement toward the waterway. Refer to the Geotechnical Assessment prepared by AscentGeo dated 29 May 2026 submitted with this DA. • Sediment and erosion controls will be implemented for the duration of construction, ensuring no pollution or siltation of the waterway. • The proposal does not involve the removal or disturbance of any remnant riparian vegetation. All existing trees within the foreshore area are retained. • The works are contained within the rear yard of an established dwelling and are read in the context of the existing terraced garden and retaining structures. The proposal does not alter the established pattern of development on the foreshore in this locality. Inclinators are a prevalent and characteristic feature of the steeply sloping waterfront allotments at Nos. 2 to 28 Cabarita Road, each of which extends within the foreshore area and descends to the pool or lowest terraced level of the respective allotment. The proposed inclinator is of comparable length, alignment, form and siting and is consistent with that established pattern. Refer to Figures 3 to 7 below. • The inclinator is a lightweight structure of minimal bulk, finished in recessive colours and materials, and will be screened by the proposed landscaping and fencing along the north-western side boundary. Its appearance from the waterway and adjacent foreshore areas will be compatible with the surrounding area. • The cantilevered roof structure to the cabana projects over, and does not touch, the foreshore area. It involves no excavation, footing or ground disturbance within the foreshore area

	and accordingly has no capacity to affect soil stability, drainage patterns, sediment movement or any other natural foreshore process. The cantilevered element carries the green roof over the cabana, extending the landscaped area of the site and softening the appearance of the structure when viewed from the waterway. • The proposed Pool Area works, being the natural stone paving, the concrete servery and planter, the level lawn and the associated garden beds, are located in the position of existing paving and hard surfaces at the lowest terraced level. They involve no increase in impervious area, no ground disturbance below the mean high water mark and no change to the drainage regime of the site, and are not visible as built form when viewed from the waterway. • The site does not contain and does not adjoin an item of environmental heritage listed in Schedule 5 to the PLEP, and is not located within a heritage conservation area. The historic, scientific, cultural, social, archaeological, architectural, natural and aesthetic significance of the land and of surrounding land is maintained. • The amenity of the foreshore area is not adversely affected, the works being domestic in scale, contained within a private rear yard, and of limited visibility from the waterway. The objective is therefore achieved notwithstanding the non-compliance with Clause 7.8(2).
(b) to ensure continuous public access along the foreshore area and to the waterway	The proposal is consistent with this objective as follows: • The site is in private ownership and there is no existing public access along the foreshore through or across the site. • The proposed works are contained wholly within the rear yard of the site and do not encroach upon any public reserve, public land, or land below the mean high water mark.

	• The proposal does not obstruct, narrow or diminish any existing public access along the foreshore or to the waterway, and does not foreclose any future opportunity to provide such access. • The proposal does not cause congestion or generate conflict between people using open space areas or the waterway, being a private domestic development generating no additional public use of the foreshore. The objective is therefore achieved notwithstanding the non-compliance with Clause 7.8(2).

Consistency with the objectives of the C4 Environmental Living zone is also addressed below. Whilst consistency with the zone objectives is no longer a separate statutory requirement under Clause 4.6, it remains relevant to the demonstration required by Clause 4.6(3)(a), and Clause 7.8(3)(a) requires the consent authority to be satisfied that the development will contribute to achieving the objectives for the zone in which the land is located.

An assessment of the proposal against the objectives of Zone C4 Environmental Living is provided in Table 2 below.

Table 2: Objectives of Zone C4 Environmental Living – Assessment Table

Objectives of Zone C4 Environmental Living	Assessment
• *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.* • *To ensure that residential development does not have an adverse effect on those values.* • *To provide for residential development of a low density and scale integrated with the landform and landscape.* • *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*	The proposal is consistent with the objectives of the C4 Environmental Living zone for the following reasons: • The proposal retains the existing residential use of the site and does not introduce any additional or incompatible land uses. • The proposed works are of a modest scale and will not adversely affect the ecological, scientific or aesthetic values of the site or surrounding land. • The proposed works are low in scale and are designed to integrate with the existing landform, the terraced levels following the natural fall of the land. Excavation is limited to that necessary to construct the terraced retaining structures and is confined to the

	rear yard, and is to be carried out in accordance with the recommendations of the Geotechnical Assessment prepared by AscentGeo dated 29 May 2026. The development remains consistent with the low-density residential character of the locality. • The site contains established landscaping comprising trees, shrubs and turf. The existing landscaped character will be retained and enhanced by the proposed planting, consistent with the objective to maintain and enhance foreshore and riparian vegetation.

Compliance with the development standard is unreasonable or unnecessary as the proposed retaining walls, stairs and landings, Pool Area works, inclinator and cabana are of a siting, scale and form that does not impact upon natural foreshore processes or affect the significance and amenity of the foreshore area, and does not compromise opportunities for continuous public access along the foreshore or to the waterway, thereby meeting the objectives of the development standard notwithstanding the non-compliance.

3.2 Clause 4.6(3)(b) — there are sufficient environmental planning grounds to justify contravening the development standard

As outlined in the 'Guide to Varying Development Standards' published by the NSW Department of Planning, Housing and Infrastructure, the term 'environmental planning grounds', while not defined in the EP&A Act or the Standard Instrument, refers to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act. The scope of environmental planning grounds is wide as exemplified by the court cases (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [60]).

The environmental planning grounds relied upon must be particular to the circumstances of the proposed development on the site, and not merely grounds that would apply to any similar development: Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Assessment: Environmental planning grounds justifying the contravention of the development standard in Clause 7.8(2) of the PLEP, particular to the circumstances of the proposed development on this site, include:

<u>Site Constraints and the Established Condition of the Land</u>

- The site falls approximately 20m from the front boundary to the top of the seawall. The rear yard within which the works that are the subject of this request are located falls steeply across a series of existing terraced levels. Terracing and retaining structures are an unavoidable response to that topography, and the terraced form of the rear yard is the established condition of the land.

- The foreshore building line crosses the rear yard of the site such that a substantial portion of the usable private open space falls within the foreshore area. Strict compliance would confine works at the rear of the site to the limited purposes listed in Clause 7.8(2)(b), and would preclude the terracing and access works necessary to make the rear of the site usable, notwithstanding that the land is already substantially modified by existing terracing, retaining structures, paving and an inground swimming pool.

- The works within the foreshore area are located generally in the position of existing paving and existing retaining walls.

- All existing trees within the foreshore area are retained, and no vegetation removal is proposed within the foreshore area.

Retaining Walls

- The existing retaining structures within the rear yard are in poor condition. The Geotechnical Assessment prepared by AscentGeo dated 29 May 2026 records settlement in the slab areas at the rear of the existing dwelling and rotation and damage to the existing landscaped retaining walls, attributed to those structures being founded on the soil profile rather than on bedrock, and the Demolition Plan identifies the copper log and rendered wall to the south-eastern boundary as dilapidated. The proposed engineer-designed retaining walls, founded on competent bedrock, will replace failing structures within the foreshore area with structures of appropriate design life, thereby improving slope stability and reducing the potential for soil loss and sediment movement toward the waterway. Refusal of the works within the foreshore area would leave those failing structures in place, which would be a poorer environmental outcome for the foreshore than the development proposed.

- The retaining walls are designed to stabilise the terraced levels of a steeply sloping foreshore allotment in accordance with the Geotechnical Assessment prepared by AscentGeo dated 29 May 2026, reducing the potential for erosion, soil loss and sediment movement toward the waterway and improving the management of overland stormwater flows across the site.

- The retaining structures within the foreshore area are constructed in sandstone-look block, consistent with the preference expressed in Clause D1.17 of the Pittwater 21 Development Control Plan for the use of sandstone or sandstone-like materials where retaining walls and terracing are visible from a public place, and directly responsive to

the advice of Council's Parks, Reserves, Beaches and Foreshore referral in the assessment of MOD2025/0350.

- Screen planting is provided between the retaining walls and atop the lower retaining wall, softening the appearance of those structures when viewed from the waterway, consistent with the outcomes of Clause D1.20 of the Pittwater 21 Development Control Plan in respect of Scenic Protection Category One Areas.

- The Arboricultural Impact Assessment prepared by Arbor Express dated 11 June 2026 records that the tree identified as Tree 6 in the earlier assessment prepared by Ents Tree Consultancy dated 5 November 2024 has since failed and fallen. The applicant advises that the failure occurred in January 2026. The Geotechnical Assessment prepared by AscentGeo dated 29 May 2026 records rotation and damage to the existing landscaped retaining walls in the rear yard, and attributes that damage to those structures having been founded on the soil profile rather than on bedrock. The site has accordingly been classified as Class P in accordance with AS 2870–2011, by reference (among other matters) to the observed rotation and damage to those walls. The demolition and reconstruction of those structures is accordingly necessary to ensure the safety and stability of the steeply sloping land, and the proposal reconstructs walls that already exist beyond the foreshore building line in substantially the same location and in a less visually intrusive configuration.

- The additional retaining wall within the foreshore area divides the height of the existing wall across two lower structures, thereby creating a garden bed between them. That configuration reduces the apparent bulk and visual prominence of the retaining structures when viewed from the waterway, allows for additional planting to soften their appearance, and provides more accessible levelled garden areas across the steep gradient of the rear yard. The works within the foreshore area are accordingly principally replacement and stabilisation works to existing retaining structures, with the additional wall delivering an improved landscape and visual outcome rather than increasing the impact of development within the foreshore area.

Inclinator

- The proposed inclinator provides safe and equitable access between the Pool Area and the Upper Lawn Level of the steeply sloping site, supporting the continued use and occupation of the dwelling and rear yard by its occupants.

- The fall of the land is a constraint inherent to the site rather than a product of the proposed development. The rear yard descends across a series of terraced levels, and the change of level between the Pool Area and the Upper Lawn Level cannot presently be negotiated other than by stairs. The inclinator provides equitable access to the private open space and to the terraced levels of the rear yard for occupants and visitors with limited mobility, for whom stairs do not provide practical access. The proposal thereby promotes the orderly and economic use and development of the land under

Section 1.3(c) of the EP&A Act, and the protection of the health and safety of the occupants of the building under Section 1.3(h).

- The inclinator is not proposed merely as an additional or optional means of access. Given the gradient of the land and the extent of stair access otherwise required between the terraced levels, it provides a necessary and practical means of safe access for the occupants of the dwelling, one of whom has a mobility impairment which significantly limits their ability to negotiate the existing stairs. The inclinator is accordingly an accessibility measure enabling reasonable and continued access between the principal landscaped levels of the site, serving each of the terraced levels of the rear yard from the Upper Lawn Level to the Pool Area.

- The inclinator is a narrow, low-profile and lightweight structure having an overall maximum height ranging from 1.7m to 2.4m to the top of the handrail and from 0.59m to 1.2m to the platform. It is aligned with the natural slope and presents no enclosed bulk. The structure is to be finished in a subdued colour palette. It will be substantially screened when viewed from the waterway by the proposed landscaping and the timber lapped and capped fencing along the north-western side boundary. Its appearance from the waterway and adjacent foreshore areas will be compatible with the surrounding area.

- The proposed inclinator has been designed to minimise its visual presence and potential impacts on adjoining properties. It will comprise a low-profile half-cab design rather than a fully enclosed cabin, reducing its overall bulk and visual prominence. The rails and carriage will be finished in a dark charcoal or dark green colour to assist the structure to visually recede within the surrounding landscape. No roof or tall enclosure is proposed, and the rail supports will be kept below 1m in height wherever technically feasible. The motor will be positioned and acoustically enclosed to minimise noise impacts on adjoining properties. Given the waterfront location, the inclinator will incorporate a marine-grade corrosion protection specification to ensure its long-term durability.

- The inclinator is located, for the greater part of its length, in the same alignment as the existing stairs along the north-western side boundary, ensuring that the works occur within an already disturbed and utilised access corridor. This minimises additional site disturbance and avoids the need for further excavation or removal of vegetation.

- The portion of the inclinator located within the foreshore area is the section that negotiates the steepest change of level on the site and serves the lower terraced levels of the rear yard, being the Garden Terrace and the Pool Area. That portion is not an incidental extension of the structure but its functional core. Were it deleted, the inclinator would terminate above the steepest part of the land and would deliver little practical accessibility benefit, and the existing stairs within the foreshore area would remain the only means of access to the lower levels of the rear yard. The extent of the encroachment is accordingly the minimum necessary for the structure to perform its

function, and is no greater than that of the existing inclinators upon the neighbouring allotments.

- For the same reason, the contravention cannot be avoided by amending the proposal to confine the inclinator landward of the foreshore building line. An amendment of that kind would not reduce the environmental impact of the development in any measurable way. It would render the structure ineffective for the purpose for which it is sought, while leaving the existing stairs, and the access constraint they present, unaddressed.

- The proposed inclinator is consistent in design and siting with the established pattern of development in the locality, inclinators being a common feature of the steeply sloping waterfront allotments along this part of Cabarita Road, being Nos. 2, 4, 6, 8, 12, 16, 18, 20, 24 and 28. Refer to Figures 3 to 7 below. Each of those inclinator structures extend within the foreshore area, and each descends to the pool or lowest terraced level of the respective allotment. The appearance of the proposed structure, when viewed from both the waterway and adjacent foreshore areas, will accordingly be compatible with the surrounding area for the purposes of Clause 7.8(3)(b), and the proposal does not introduce a form of development that is foreign to the foreshore setting.

- The inclinators identified above along Nos. 2 to 28 Cabarita Road establish a clear and consistent pattern of development along this section of the foreshore of Careel Bay. That pattern is the product of the physical characteristics shared by these allotments, being waterfront lots which fall steeply from Cabarita Road to the waterway and upon which a mechanical conveyance is the only practical means of providing equitable access between the terraced levels of the rear yard. The proposed inclinator responds to the same constraint, in the same manner, and to a comparable extent.

- The proposed inclinator is to extend to the Pool Area so as to correspond in length with the existing inclinators upon the neighbouring allotments and with the lower of the inclinator lifts approved at No. 16 Cabarita Road under DA2020/0776. The proposal accordingly does not extend further into the foreshore area than the established pattern of development in this locality, and does not introduce a structure of greater length, height or visual prominence than those already present upon the adjoining and nearby allotments. Refer to Figure 7 below.

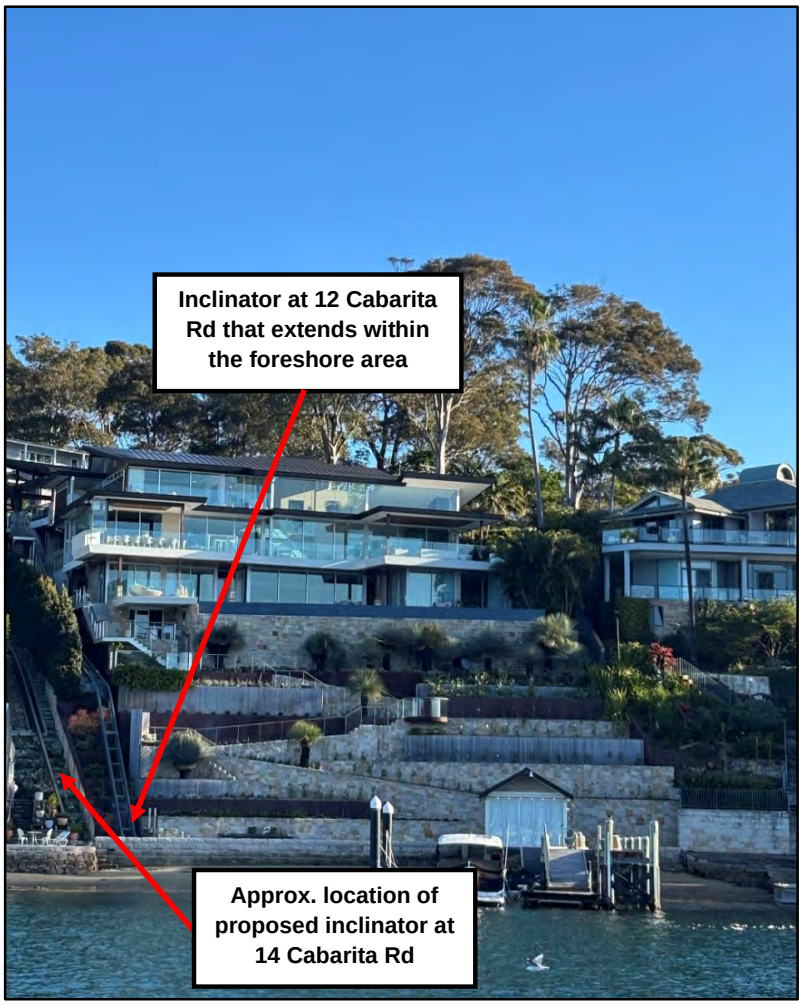


Figure 3: Photo of the retaining walls and inclinator at No. 12 Cabarita Road that extends within the foreshore area



Figure 4: Oblique photograph showing the inclinators (red arrows) at Nos. 12, 16, 18 and 20 Cabarita Road that extend within the foreshore area (image provided by applicant)



Figure 5: Oblique photograph showing the inclinators at Nos. 2 and 4 Cabarita Road that extend within the foreshore area (image provided by applicant)

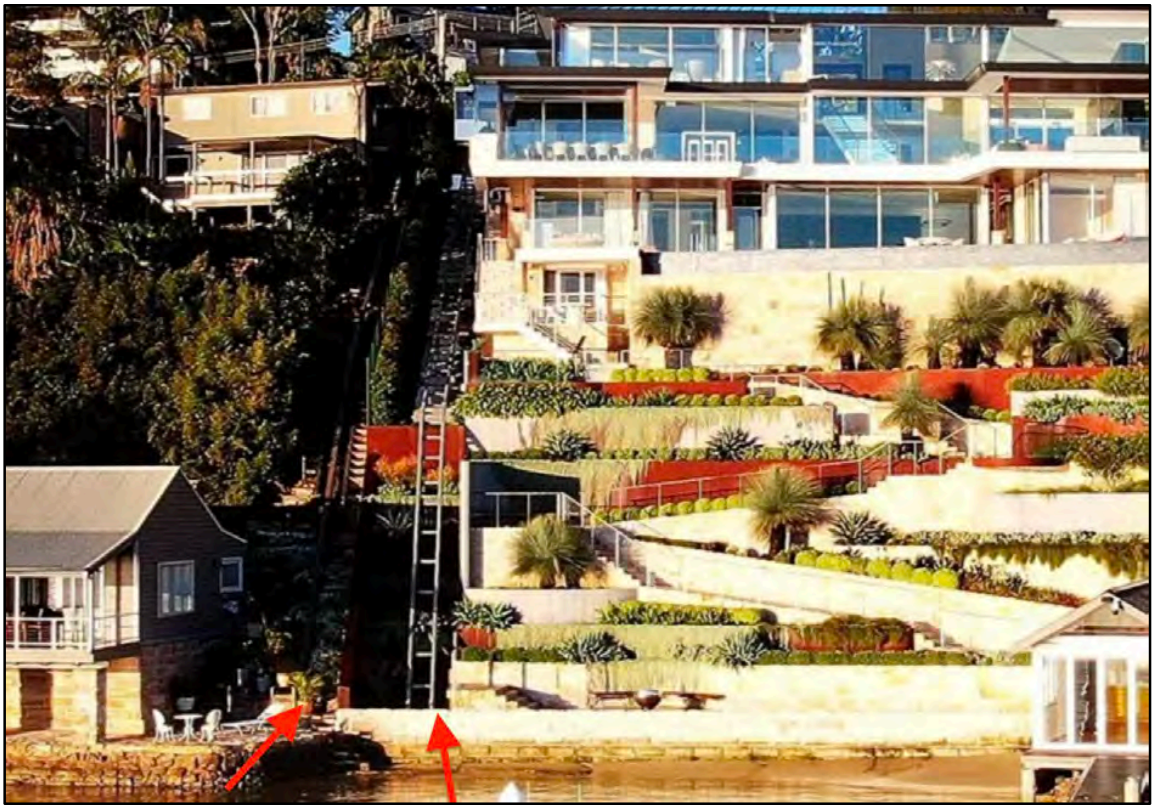


Figure 6: Oblique photograph showing the inclinators at Nos. 6 and 8 Cabarita Road that extend within the foreshore area (image provided by applicant)



Figure 7: Aerial image showing the approximate lengths of the inclinators at Nos. 2 to 28 Cabarita Road, noting that the neighbouring inclinator structures extend within the foreshore and that the proposed inclinator is consistent with the length of the surrounding inclinators (Source: NearMap 2026)

- The proposed inclinator is located and designed to minimise privacy impacts on adjoining properties. It will be screened from No. 12 Cabarita Road by fencing and vegetation.

- An inclinator was approved at No. 16 Cabarita Road under DA2020/0776, on the allotment which directly adjoins the subject site. The lower of those lifts extends into the foreshore area. The consent authority accepted that an inclinator of this kind within the foreshore area was acceptable upon the immediately adjoining allotment. Refer to the extract of the approved plan below.

- The inclinator within the foreshore area at No. 16 Cabarita Road was supported in the Council development application assessment report in the following terms:

> *"Clause 7.8 of the PLEP 2014 stipulates that consent can be granted for development on land within the foreshore area for the purposes of waterway access stairs. The proposed inclinator lift at the rear of the site is not specifically identified as a permitted development within the foreshore area. However, the proposed lift provides for safe and convenient access to and from the foreshore area. As the purpose of the inclinator lift is to provide access to the waterway, it is considered a form of waterway access, thereby permitted development under this clause."*
>
> *"The proposed development is consistent with the objectives of the E4 Environmental Living* [C4 Environmental Living] *zone, given it is ancillary to the low density residential use, is integrated into the landform and landscape and will not have an adverse impact on the ecological and aesthetic values of the locality. The development will not result in the removal of significant vegetation or topographic features, nor will it cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. Noting that incline passenger lifts are prevalent within the locality, the development is not likely to have an unreasonable visual impact on the adjoining Pittwater waterway. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns."*

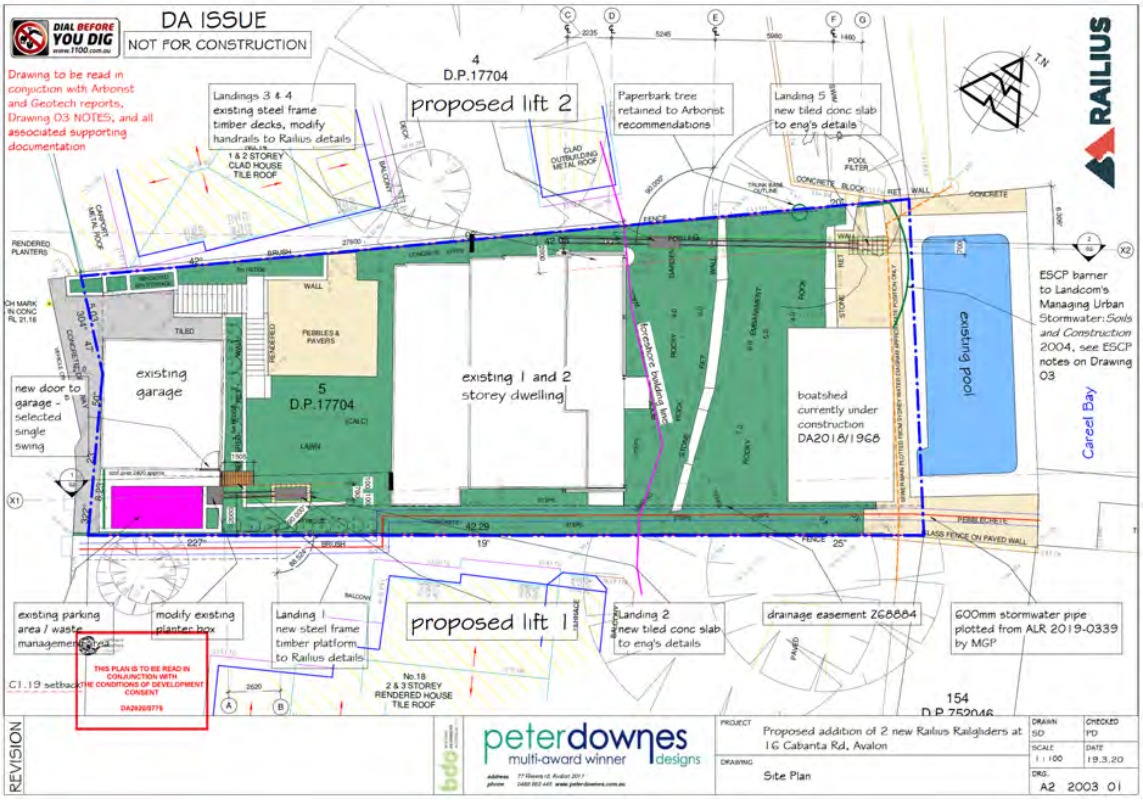


Figure 8: Extract of the approved plan showing that the approved inclinator at No. 16 Cabarita extends within the foreshore area
(Source: Peter Downes Designs, Drawing A2 2003 01, as approved under DA2020/0776)

- The assessment reasoning in respect of No. 16 Cabarita Road is directly applicable to the site. The zone objectives, the matters in Clause 7.8(3) and the visual relationship with the Pittwater waterway are the same, and the consent authority there accepted that an inclinator of this kind is ancillary to the low density residential use of the land, is integrated into the landform and landscape, does not remove significant vegetation or topographic features, does not cause environmental harm, does not compromise public access along the foreshore and, inclinators being prevalent in the locality, does not have an unreasonable visual impact upon the waterway. Each of those findings is available on the present facts.

- The lift approved at No. 16 Cabarita Road is supported on steel posts founded on new concrete footings within the foreshore area, with a minimum clearance maintained beneath the rail. The consent authority accordingly accepted structural elements of that kind within the foreshore area on the adjoining allotment. The proposed inclinator at No. 14 Cabarita Road is comparable in form and is no more intrusive.

- The permissibility finding made in respect of No. 16 Cabarita Road is not relied upon in this request. That finding proceeded upon the view that an inclinator providing access to and from the waterway is a form of waterway access stairs for the purposes of Clause 7.8(2)(b), the lower landing of that lift being located at RL 1.805 immediately

adjacent to the pool coping and the seawall. Council has advised that the legal advice upon which that view was based has since been superseded, and this request proceeds upon the basis that development consent cannot be granted for the proposed inclinator under Clause 7.8(2)(b), as set out in Section 2.2 above. The assessment reasoning in respect of No. 16 is relied upon only in relation to the impacts of an inclinator of this kind within the foreshore area, which are unaffected by the change in the statutory pathway by which development consent may be granted.

- The distinction between the proposed inclinator and those inclinators already approved and constructed within the foreshore area in this locality is accordingly one of legal characterisation rather than of environmental impact. The change in Council's approach alters the pathway by which development consent may be granted for a structure of this kind. It does not alter the physical form of the structure, its siting, its length, or its effect upon natural foreshore processes, upon the significance and amenity of the foreshore area, or upon opportunities for continuous public access along the foreshore and to the waterway. The findings previously made by the consent authority as to each of those matters remain applicable and are available upon the present facts.

- Strict compliance with the development standard would require the refusal of the inclinator, or its truncation at the foreshore building line, in circumstances where the comparable allotments along this section of Cabarita Road are each served by an inclinator extending within the foreshore area to the pool or lowest terraced level, and where the proposal is consistent with that established pattern in length, alignment, form and siting. An outcome of that kind would produce an isolated departure from the established character of the foreshore in this locality without any corresponding environmental benefit, and would not advance the objectives of Clause 7.8(1).

<u>Cabana</u>

- The cabana replaces an existing cabana in substantially the same position on the Cabana Level. The encroachment into the foreshore area is confined to a cantilevered roof element of approximately 2.8m^2, elevated above ground level and involving no excavation, footing or ground disturbance within the foreshore area. Refer to the extract of the proposed cabana floor plan below.

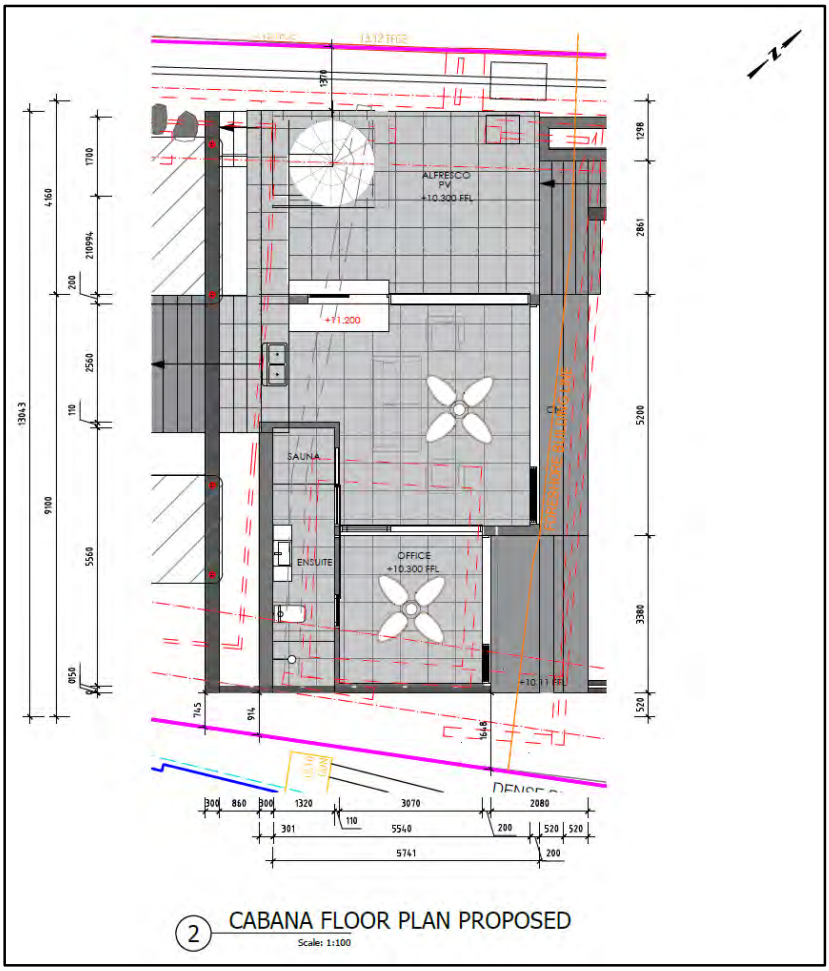


Figure 9: Extract of the cabana floor plan showing that the cabana does not include any footing or ground disturbance within the foreshore area
(Source: Giddis Drafting Services, Drawing 08, Revision E)

- The cantilevered form has been adopted in preference to a roof supported on columns or on walls extending to the north-east. It avoids any structural support being founded within the foreshore area and is accordingly a demonstrably better environmental outcome for the foreshore than a supported structure of equivalent extent would be.

- The cantilevered roof structure carries the green roof over the cabana, together with the level lawn and perimeter garden beds at the Upper Lawn Level. The Landscape Calculations (Drawing 09) demonstrate an increase in landscaped area across the site from approximately 198m^2 (32%) to 246m^2 (40%). The proposal therefore increases the landscaped area of a site within the foreshore setting, consistent with the objective of the C4 Environmental Living zone to provide for residential development of a low density and scale integrated with the landform and landscape.

- Importantly, the projecting portion of the roof does not increase the usable floor area of the cabana. It provides the additional area required to carry the landscaped green roof above, such that any reduction in the roof projection would directly reduce the

available planting and garden area and limit the opportunity to soften and visually integrate the building within its landscaped setting. Retention of that portion of the roof accordingly delivers an improved landscape outcome and assists in reducing the visual impact of the cabana when viewed from the foreshore and from surrounding properties.

- The projecting roof structure provides shading to the glazing of the cabana below, reducing solar heat gain and improving the thermal performance of the building, consistent with the object in Section 1.3(g) of the EP&A Act relating to good design and amenity of the built environment.

- The encroachment occurs at the Cabana Level, well above the mean high water mark and separated from the waterway by the Lower Lawn, Garden Terrace, Lookout Level and Pool Area. It is read against the backdrop of the existing dwelling and the terraced rear yard and, being a horizontal element carrying a green roof and screened by retained vegetation, adds no perceptible bulk when viewed from the waterway or from adjacent foreshore areas.

- No vegetation removal is proposed within the foreshore area in connection with the cabana, and all existing trees in that part of the site are retained.

- The extent of the encroachment is minor. A departure of this order does not undermine the foreshore building line as a planning control, and strict compliance would require the deletion of a roof element that delivers additional landscaping, improved thermal performance and no ground disturbance within the foreshore area. Compliance in those circumstances would produce a poorer environmental planning outcome than the development proposed. Nor is the contravention avoided by setting the roof back to the foreshore building line. A setback of that kind would remove the area required to carry the green roof and its perimeter planting, reducing the landscaped area of the site and exposing a hard roof edge to the waterway, without any corresponding reduction in ground disturbance within the foreshore area – there being none in either case.

Conclusion

- Overall, the proposed works within the foreshore area do not result in any unreasonable impact upon the amenity of adjoining properties in terms of visual and acoustic privacy, overshadowing, view loss, outlook, or bulk and scale, the works being domestic in scale and located within the rear yard of the site, the only elements above ground level being the inclinator rail and the cantilevered roof edge to the cabana.

- The proposal is consistent with the objectives of the development standard in Clause 7.8(1) and with the objectives of the C4 Environmental Living zone, as demonstrated above.

- The proposed works within the foreshore area, and in particular the inclinator, are consistent with the established pattern of development along this section of the foreshore and with the inclinator approved on the adjoining property at No. 16 Cabarita Road.

- The proposal represents the orderly and economic use and development of land, being an object of the EP&A Act under Section 1.3(c).

On the above basis, it is considered that there are sufficient environmental planning grounds, particular to the circumstances of the proposed development on this site, to justify contravening the development standard in Clause 7.8(2) of the PLEP in this instance.

4. Conclusion

This Clause 4.6 variation request is considered to adequately address the relevant matters under Clause 4.6 and demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances (Clause 4.6(3)(a)) and that there are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b)).

The proposal is consistent with the objects of Section 1.3 of the EP&A Act by promoting the following:

- The social and economic welfare of the community and a better environment (Section 1.3(a))
- orderly and economic use and development of land (Section 1.3(c))
- protect the environment (Section 1.3(e))
- good design and amenity of the built environment (Section 1.3 (g))
- proper construction and maintenance of buildings, including the protection of the health and safety of their occupants (Section 1.3(h))

The proposal is consistent with the objectives of the development standard in Clause 7.8(1) of the PLEP and with the objectives of the C4 Environmental Living zone, and will not result in any unreasonable impact upon natural foreshore processes, the significance or amenity of the foreshore area, or opportunities for continuous public access along the foreshore and to the waterway.

For reasons mentioned herein, this Clause 4.6 variation request is forwarded in support of the development proposal at No. 14 Cabarita Road, Avalon Beach and is requested to be looked upon favourably by the consent authority.

ITEM 5.2 DA2026/0735 - 7 THE CHASE LOVETT BAY - CONSTRUCTION OF AN INCLINE PASSENGER LIFT

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the non-numerical development standard prescribed under Clause 7.8 Limited development on foreshore area 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 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.

The Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2026/0735 for Construction of an incline passenger lift at Lot 8 DP 542698, 7 The Chase LOVETT BAY NSW 2105 subject to the conditions set out in the Assessment Report.

Reporting manager:	Executive Manager Development Assessment
Attachments:	1. Assessment Report [**5.2.1** - 39 pages] 2. Site Plans & Elevations [**5.2.2** - 2 pages] 3. Clause 4.6 [**5.2.3** - 9 pages]

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2026/0735

Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 8 DP 542698, 7 The Chase LOVETT BAY NSW 2105
Proposed Development:	Construction of an incline passenger lift
Zoning:	C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Applicant:	Inclined Lifts Pty Ltd

Application Lodged:	10/06/2026
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/06/2026 to 08/07/2026
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	7.8 Limited development on foreshore area
Recommendation:	Approval

Estimated Cost of Works:	$ 170,500.00

EXECUTIVE SUMMARY

This development application seeks consent for the construction of an incline passenger lift.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposed inclinator extending into the foreshore area, thereby resulting in a variation to the non-numerical development standard prescribed under Clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

A portion of the proposed inclinator extends into the foreshore area, including the lower landing at the paved area adjoining the boatshed. The application is accompanied by a written Clause 4.6 variation request to

justify the contravention of the development standard. The Clause 4.6 advances environmental planning grounds which seeks to justify the proposal on the basis that the site only has access from the waterfront (no road access) which the inclinator provides supported primary accessibility.

The application has been publicly exhibited from 24 June 2026 to 8 July 2026 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan. No submissions were received.

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 NBLPP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of the construction of an inclinator.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C3 Environmental Management
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways
Pittwater 21 Development Control Plan - D8.9 Landscaped Area

SITE DESCRIPTION

Property Description:	Lot 8 DP 542698 , 7 The Chase LOVETT BAY NSW 2105
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Lovett Bay. The site is irregular in shape and is bound by the Mean High Water Mark (MHWM) at the Lovett Bay waterfrontage. The site has a depth of 37.49m and a surveyed area of 711m². The site is located within the C3 Environmental Management zone under the PLEP 2014. The site is currently occupied by a dwelling house and boatshed with a jetty at the waterfront. The site slopes down from the western towards the eastern waterfront. The site contains several trees and vegetation and portions of the site are identified on the Department of Climate Change, Energy, The Environment and Water (DCCEEW) Biodiversity Values Map. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential dwelling houses of varying sizes and styles.

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	See detailed assessment under "DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS" below.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to a Clause 4.6 request to vary Clause 7.8 of the PLEP 2014. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (b) – the significant 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.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

Draft Northern Beaches Local Environmental Plan (Draft LEP)

Definition(s): dwelling house means a building containing only one dwelling

Land Use Zone: C3 Environmental Management

Permissible or Prohibited: Permissible

Additional Permitted used for particular land – Refer to Schedule 1: Not applicable

A detailed assessment against the proposed numerical provisions and development standards has not been undertaken as part of this report. However, broad consideration has been given to the Draft LEP, and the proposal is consistent with its relevant aims and objectives.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the

specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that states that the proposed inclinator is classified as a 10b structure and conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 24/06/2026 to 08/07/2026 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Unsewered Lands)	***Referral completed - no conditions required*** **General Comments** This application is seeking consent for landscape work, the construction of a new inclined lift with platforms and safety balustrades. There is no proposed change or work to the existing dwelling on the subject site or parking arrangements. The location of the inclined lift does not interfere with the existing wastewater treatment system onsite therefore no conditions from Environmental Health required. **Recommendation** SUPPORTED - no conditions

Internal Referral Body	Comments
Landscape Officer	***Referral completed - conditions recommended*** The application as described in reports and as illustrated on plans is assessed by Landscape Referral against the Pittwater Local Environment Plan 2014 zone C3 Environmental Management, and the following Pittwater 21 DCP controls (but not limited to): B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; and D8 Lower Western Foreshores and Scotland Island Locality. The site is within zone C3 Environmental Management, and the following objectives are to be achieved and/or maintained by development: protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values; provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent; encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors; and ensure the continued viability of ecological communities and threatened species. No Landscape Plans are submitted nor required as the existing landscape setting is maintained in consideration of DCP controls B4.22, C1.1 and the landscape objectives of the C3 Environmental Management zone. One exempt tree species is required to be removed to accommodate the proposed works and as an exempt species does not require Council consent. Standard Council tree and vegetation protection conditions shall be imposed that reflects the recommendations of the submitted arborist report.

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	***Referral completed - conditions recommended*** Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable controls and provisions: - Biodiversity Conservation Act 2016 - Biodiversity Conservation Regulation 2017 - SEPP (Resilience & Hazards) 2021 - Coastal Environment Area - Pittwater LEP 2014 - 7.6 Biodiversity Protections - Pittwater 21 DCP - B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community Portions of the site are identified on the Department of Climate Change, Energy, the Environment and Water (DCCEEW) Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act 2016, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). The Arboricultural Impact Assessment (AIA) (TREESPACES, May 2026) proposes the removal of Tree 10 to accommodate the incline lift. Tree 10 is a Callistemon viminalis, an Australian native species that is not locally native to this area. It is of low landscape significance and 3 m in height, making it an exempt tree. Its location is outside of the BV mapped area on the property. Therefore, this proposal does not trigger the BOS. There are no objections from a biodiversity perspective, subject to conditions.

Internal Referral Body	Comments
NECC (Coast and Catchments)	***Referral completed - conditions recommended*** This proposed development is for the construction of an incline passenger lift. Officer comments: This application was assessed in consideration of: · Supplied plans and reports; · Coastal Management Act 2016; · State Environmental Planning Policy (Resilience & Hazards) 2021 (sections 2.10, 2.11 & 2.12); · Relevant sections of the Pittwater Local Environmental Plan 2014 (LEP) · Pittwater 21 Development Control Plan 2014 (DCP) · Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015). The application is generally consistent with relevant planning controls. Coastal Management Act 2016 The subject site is located 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 section 3 of the Coastal Management Act 2016. Comment: On internal assessment, the proposed development does generally comply with the objectives of the Coastal Management Act 2016 with respect to matters related to coastal processes and hazards. As such the application is generally consistent with the objects of the Coastal Management Act 2016. This referral has not assessed the compliance of the proposed development, for any potential impact on the scenic value of the area in accordance with the objectives of section 3(a) of the Coastal Management Act 2016 that relate to scenic impact. Assessment of compliance with section 3(a) of the Coastal Management Act 2016 will be by the development assessment officer assessing this development application. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject site is located on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, section 2.10, section 2.11 and section 2.12 of the State Environmental Planning Policy (Resilience & Hazards) 2021 apply to the proposed development. Comment: On internal assessment, the DA satisfies the requirements under section 2.10, section 2.11 and section 2.12 of the State Environmental Planning Policy (Resilience & Hazards) 2021. This referral has not assessed the compliance of the proposed development, against any potential impact on the visual amenity or scenic qualities of the coast in accordance with section 2.11(1)(a)(ii)

Internal Referral Body	Comments
	and section 2.11(1)(a)(iii) of the State Environmental Planning Policy (Resilience & Hazards) 2021. Assessment of compliance with these sections will be by the development assessment officer assessing this development application. Comment: As such, it is considered that the application generally complies with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Pittwater LEP 2014 and Pittwater 21 DCP Comment: No other coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant sections of the Pittwater LEP 2014 and Pittwater 21 DCP. Estuarine Risk Management & Subdivision The subject site is also identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP), the relevant section B3.7 Estuarine Hazard Controls in Pittwater 21 DCP will apply to any proposed development of the site. In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL (reduced level - AHD) 2.77m AHD would apply at the subject site. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Inclined Lifts dated 20 January 2025, the ground floor level for the proposed additions and alterations is below the derived EPL for the site. The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of Pittwater 21 DCP.
NECC (Riparian Lands and Creeks)	***Referral completed - conditions recommended*** This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. This site is adjacent to Pittwater and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater, or on the quantity and quality of surface and ground water flows to Pittwater. A Sediment and Erosion Control Plan must created and all mitigation measures installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.

External Referral Body	Comments
External - Ausgrid - Section 4.31 of SEPP (Planning Systems) 2021 Development near electricity infrastructure - s4.31 (of SEPP) 2021	***Referral completed - conditions recommended*** In accordance with Clause 4.31 of SEPP (Planning Systems) 2021, 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	***Referral completed - conditions recommended*** The area has been subject to previous disturbance, and the potential of intact, unrecorded Aboriginal objects being present is considered low. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. **Unexpected Finds / Stop Work Clause** It should be noted that under the National Parks and Wildlife Act 1974, all Aboriginal objects are protected, whether recorded or not. If any suspected Aboriginal objects, cultural materials, or human remains are uncovered during works: 1. All work must cease immediately in the vicinity of the find. 2. The area must be made safe and protected from further disturbance. 3. The Aboriginal Heritage Office must be contacted as soon as practicable for advice. 4. If the material is confirmed as Aboriginal, Heritage NSW and the relevant Aboriginal Land Council must be notified in accordance with section 89A of the Act, and works must not recommence until appropriate authorisation is provided. If human remains are uncovered during construction or earthworks: 1. All works must cease immediately in the vicinity of the find. 2. The area must be secured and protected from further disturbance. 3. NSW Police must be contacted immediately, in accordance with statutory requirements. 4. Works must not recommence unless authorised by NSW Police and relevant authorities.

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 (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

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

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

Comment:
The proposal has been reviewed and supported by the following teams within Council: Environmental Health, Landscape, Bushland and Biodiversity, Riparian Lands and Creeks, and Coast and Catchments. Additionally, the proposal has been reviewed and supported by the Aboriginal Heritage Office. As such, the proposal is not likely to cause an adverse impact on the above matters.

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 proposal has been designed, sited and will be managed subject to the recommended conditions to avoid adverse impacts on the coastal environment.

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 adverse
      ii) 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 proposal has been reviewed and supported by the following teams within Council: Environmental Health, Landscape, Bushland and Biodiversity, Riparian Lands and Creeks, and Coast and Catchments. Additionally, the proposal has been reviewed and supported by the Aboriginal Heritage Office. As such, the proposal is not likely to cause an adverse impact on the above matters.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

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

Comment:
The proposed development is not likely to cause increased risk of coastal hazards.

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

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

Comment:
The proposal has been reviewed with regard to all relevant legislation and policies.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	1.2m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	No
7.10 Essential services	Yes

Detailed Assessment

Zone C3 Environmental Management

The underlying objectives of the C3 Environmental Management zone

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

  Comment:

  The proposal has been reviewed and supported by the following teams within Council: Environmental Health, Landscape, Bushland and Biodiversity, Riparian Lands and Creeks, and Coast and Catchments. Additionally, the proposal has been reviewed and supported by the Aboriginal Heritage Office. As such, the proposal helps protect, manage and restore areas with special ecological, scientific, cultural and aesthetic values.

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

  Comment:

  The proposed development consists of the construction of an inclinator to provide improved access from the waterfrontage to the dwelling house. The proposed inclinator has been sited in response to the location of existing significant trees to ensure biodiversity is preserved. As such, the proposed development does not have an adverse effect on the above values.

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

  Comment:

  The proposed inclinator is sited close to natural ground level and is ancillary to the existing dwelling house. The proposed inclinator is appropriately integrated with the landform and landscape so as not to become visually prominent.

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

Comment:

The proposed inclinator is designed and sited to retain and enhance riparian and foreshore vegetation and wildlife corridors.

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

Comment:

The proposal does not disrupt ecological communities or threatened species.

4.6 Exceptions to development standards

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

Development standard: Clause 7.8 Limited development on foreshore area
Requirement: Foreshore Building Line (criteria as specified under Clause 7.8)
Proposed: A portion of the inclinator extends into the foreshore area
Percentage of variation: N/A - non-numerical development standard

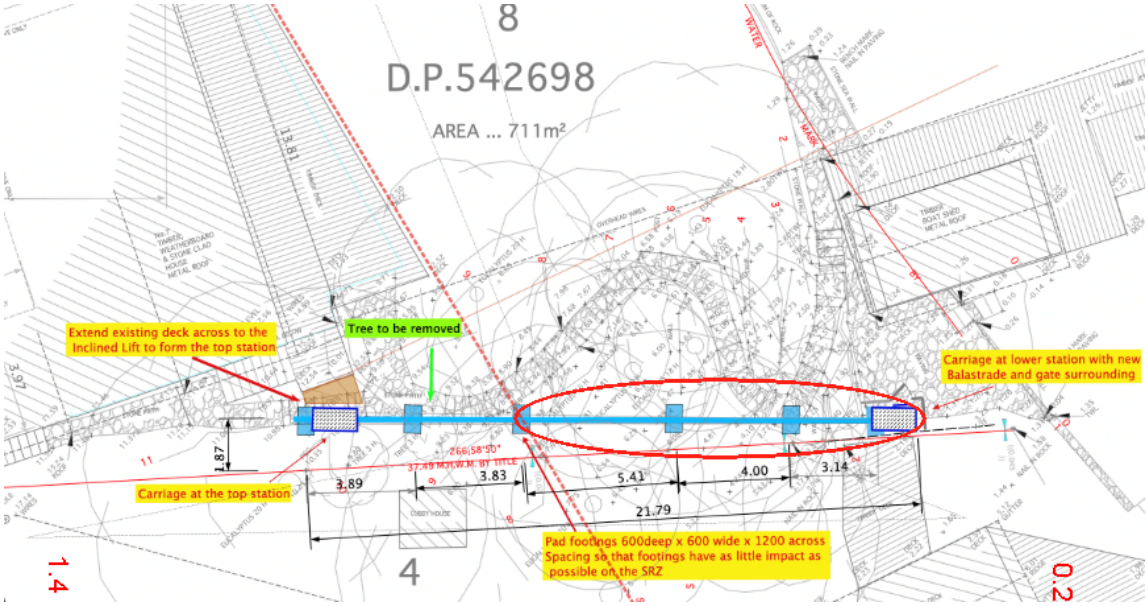


Figure 1 - Plan showing extension of inclinator into the foreshore area circled red

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the 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 7.8 Limited development on foreshore area 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 7.8 Limited development on foreshore area is unreasonable or unnecessary in the circumstances of this application for the following reasons:

The objectives of the development standard are achieved notwithstanding the non-compliance. Importantly, the proposed inclinator does not impact on natural foreshore processes or affect the significance and amenity of the area. The application is accompanied by an Arborist Report and Geotechnical Report and has been reviewed and supported by the following teams within Council: Environmental Health, Landscape, Bushland and Biodiversity, Riparian Lands and Creeks, and Coast and Catchments. The proposed inclinator is sited wholly above the mean high water mark and does not impact on public access along the foreshore area and to the waterway. Additionally, it is important to note the location of the site and its nature as waterway access only. As such, the site does not have any vehicular access and relies solely on waterway access. Therefore, the proposed inclinator serves a functional purpose providing improved access to the site.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

- *Essential connection on a water-access-only property. The waterfront is the property's sole practical transport interface. A lift stopping at the foreshore building line would not connect the dwelling to the arrival and departure point and would not perform its essential access function.*
- *Exceptional topography and safety. The steep terrain creates a materially constrained pedestrian route between the dwelling and the water. The lift provides a safer, continuous and step-free alternative for occupants and visitors, including people with limited mobility.*
- *A compliant alternative would defeat the purpose. Moving the lift wholly landward of the foreshore building line would sever the connection to the waterfront. The contravention is therefore a direct and unavoidable consequence of the legitimate function of a waterfront access lift, not an attempt to obtain additional floor area or recreational building bulk.*
- *Minimal and reversible physical footprint. The rail and supports occupy a narrow corridor and require localised foundations, with no habitable floor area, roofed building mass, shoreline reclamation or broad excavation.*
- *Responsive engineering and coastal design. The proposal incorporates geotechnical recommendations, corrosion protection, flood-compatible construction, protected electrical systems and automatic carriage return. These measures reduce risk without changing natural foreshore processes.*
- *Protection of landscape and biodiversity values. The alignment and low-profile design minimise vegetation disturbance and visual exposure. One low-retention tree is removed, while significant vegetation is retained and protected in accordance with the arboricultural assessment. The submitted material states that the removed tree is outside the Biodiversity Values Map area.*
- *No public-access or waterway impact. The works remain on private land above Mean High Water Mark and neither obstruct a public foreshore route nor interfere with navigation, water access or use of the bay.*
- *Orderly and economic use of land. The development provides necessary access to an existing lawful dwelling without intensifying land use and in a form suited to the locality's boat-only access and steep terrain.*

It is agreed that the site's topography is steep which poses challenges for safe pedestrian access to the site. This is compounded by the nature and location of the site as waterway access only where there is no vehicular access. Therefore, the proposed inclinator provides a means of essential safe access from the waterway to the dwelling. Additionally, the proposed inclinator has been sensitively designed to avoid impacts to significant trees and biodiversity values with only one tree proposed for removal which is an exempt tree.

The proposal has been reviewed and supported by Council's Landscape Team and Bushland and Biodiversity Team.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 7.8 Limited development on foreshore area for the following reasons:

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

Public Interest:

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

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances including the site's topography and waterway access nature, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

7.6 Biodiversity protection

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

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

Comment:

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

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

Comment:

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

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

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

Comment:

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

7.8 Limited development on foreshore area

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

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

Comment:
The proposed development includes the construction of an inclinator that is partially located within the foreshore area. Such development does not constitute waterway access stairs, therefore contravening Clause 7.8. The development however is found to be acceptable for the reasons as set out in 'Clause 4.6 Exceptions to development standards' elsewhere in this report.

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

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
    - *pollution or siltation of the waterway, or*
    - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
    - *an adverse effect on drainage patterns, or*

- *the removal or disturbance of remnant riparian vegetation, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:
The proposed development is consistent with the objectives of the C3 Environmental Management zone. The appearance of the proposed development is compatible with the surrounding area. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

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

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Rear building line	FBL	Below	N/A	**No**
Inclinator Setback	2.0m from outer face of carriage	0.2m-1.4m	30-90%	**No**

Building envelope	3.5m	Within envelope	-	Yes
	3.5m	Within envelope	-	Yes
Landscaped area	71% (Site Coverage: 29%)	69.0% (490.3m^2)	2.8%	**No**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	No	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.2 Scenic protection - General	Yes	Yes
D8.3 Building colours and materials	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D8.8 Building envelope	Yes	Yes
D8.9 Landscaped Area	No	Yes
D8.15 Site disturbance	Yes	Yes

Detailed Assessment

C1.19 Incline Passenger Lifts and Stairways

Detailed Assessment

This control stipulates the following:

Incline passenger lifts and stairways shall:

- *be designed and located so they do not involve excessive excavation, or the removal of natural rock or trees, and*
- *be erected as near as possible to the ground level (existing) of the site, and shall not involve the erection of high piers or visible retaining structures, and*
- *be located and designed to minimise the effects of noise from the motor and overlooking of adjoining dwellings, and*
- *be painted to blend in with surrounding vegetation and screened by landscaping and*
- *be set back two (2) metres from the side boundary to the outer face of the carriage*
- *be located wholly on private land, and*
- *have a privacy screen where there is a direct view within 4.5m to a window of a habitable room of another dwelling.*

Comment

The proposed inclinator does not require excessive excavation and is sited close to ground level with a maximum rail height of 1.2 metres. The proposed inclinator is sensitively designed to retain all existing prescribed trees with only one exempt tree requiring removal. The proposed inclinator is sited along the southern side boundary sitting at the closest point 0.2 metres from the outer face of the carriage to the boundary at the lower landing extending to 1.4 metres at the top landing. It is noted that a portion of the site is identified on the NSW Governments Biodiversity Values Map (BV Map), whereby removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR) under the NSW Biodiversity Conservation Act (BC Act). As such, the opportunity for alternative inclinator routes is constrained by the presence of native vegetation and the provisions of the BC Act. If the inclinator was shifted to the north to increase the southern side setback, the route would pass through the structural route zone of prescribed spotted gum trees and could necessitate removal. If any of the spotted gum trees required removal, this would trigger the need for a BDAR. As such, the proposed inclinator route demonstrates an attempt to avoid and minimise environmental impacts. Given the proximity to the adjoining dwelling, a condition is recommended requiring a privacy screen to be installed on the outer southern side of the inclinator carriage to mitigate privacy impacts. Additionally, a condition is recommended requiring the inclinator to be of a medium to dark colour range to blend in with the natural environment. A condition is also recommended requiring noise levels of the inclinator not to exceed 60dB(A) when measured one metre from any adjoining premises.

Merit Consideration

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

- *Incline passenger lifts and stairways that cause minimal visual and acoustic disturbance to the environment and neighbours. (En, S)*

  Comment:

  The proposed inclinator is designed and sited to retain all existing prescribed trees and native vegetation. Conditions are recommended ensuring that appropriate noise levels and privacy are maintained minimising acoustic disturbance.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit.

D8.9 Landscaped Area

Description of non-compliance

This control stipulates a maximum site coverage of 29% or minimum landscaped area of 71%.

Provided the outcomes of this control are achieved, the following may be permitted on the landscaped proportion of the site:

- *impervious areas less than 1 metre in width (e.g. pathways and the like);*
- *for single dwellings on land zoned C3 Environmental Management, up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only (e.g. roofed or unroofed pergolas, paved private open space, patios, pathways and uncovered decks no higher than 1 metre above ground level (existing)).*

The proposal provides 69% (490.3m^2) landscaped area including the above variation.

Comment:

The outcomes of the control are:

- *To achieve the desired future character of the Locality. (S)*
- *The bulk and scale of the built form is minimised. (En, S)*
- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties. (En, S)*
- *Vegetation is retained and enhanced within 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 including tree canopy. (En)*
- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)*
- *To ensure the distribution of height and mass preserves, and enhances neighbourhood amenity and has regard to site characteristics and environmental constraints.*
- *To conserve significant natural features of the site and contribute to effective management of biodiversity.*

- *The area of site disturbance is minimised. (En)*
- *Soft surface is maximised. (En, S)*

The proposal is for an inclinator which occupies only 7.8m^2 of the site area contributing to a minor reduction in landscaped area. The proposed inclinator is sited close to ground level and is appropriately designed to minimise its appearance from the waterway. The proposal has been reviewed and supported by the following teams within Council: Environmental Health, Landscape, Bushland and Biodiversity, Riparian Lands and Creeks and Coast and Catchments.

The development is consistent with the outcomes of the control and is acceptable on merit.

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 $ 853 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of $ 170,500.

CONCLUSION

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

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

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

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

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

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 7.8 Limited development on foreshore area 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 construction of an incline passenger lift has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation to Clause 7.8 Limited development on foreshore area under the PLEP 2014.

The Clause 4.6 advances environmental planning grounds which seeks to justify the proposal on the basis that the site only has access from the waterfront (no road access) which the inclinator provides the primary means of access. Additionally, the site is steeply sloping, furthering accessibility constraints whereby the inclinator provides improved safe access. The proposed inclinator has been sensitively designed to avoid and minimise impacts on the natural environment and foreshore amenity.

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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2026/0735 for Construction of an incline passenger lift on land at Lot 8 DP 542698, 7 The Chase, LOVETT BAY, 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**
066-01	-	Proposed Inclined Lift and Landings	Inclined Lifts Pty Ltd	25 May 2026
066-2	-	Proposed Inclined Lift and Landings	Inclined Lifts Pty Ltd	26 January 2026
066-2	-	Proposed Inclined Lift and Landings	Inclined Lifts Pty Ltd	26 January 2026

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Bushfire Compliance Assessment – Inclined Travelator / Rail Access System	-	Matthew Willis - Bushfire Planning Services	20 January 2026
Geotechnical Assessment Report for the Proposed Inclined Lift at 7 The Chase, Lovett Bay	G2507	BMB Engineers	23 December 2025
Waste Management Plan	-	Andrew Gould - Inclined Lifts Pty Ltd	25 June 2026
Arboricultural Impact Assessment Report and Method Statement	2	TREESPACES Pty Ltd	7 May 2026

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	Undated

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

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

3. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

i) Long Service Levy - Payment should be made to Service NSW (online or in person) or directly to the Long Service Corporation. 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) If proposing to undertake works on Council property, a “Road Opening Permit” will need to be applied for from Council, and all applicable charges paid, prior to the commencement of any work. 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. Please contact Road Restorations Team at Council if unsure whether a Road Opening Permit is required.

(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 $852.50 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $170,500.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

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

- A full height privacy screen is to be installed on the outer southern side of the inclinator carriage. The privacy screen can either be solid, opaque glazing fixed

panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- The inclinator (including the rail, carriage, balustrades and landings) are to be finished in a medium to dark colour range of earthy tones/materials.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

8. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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. **Estuarine Hazard Design Requirements**
All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise risks associated with coastal hazards for development in an estuarine environment.

11. **Estuarine Planning Level Requirements**
An Estuarine Planning Level (EPL) of 2.77m AHD has been adopted by Council for the subject

site and shall be applied to all development proposed below this level as follows:

1. All structural elements below 2.77m AHD shall be of flood compatible materials;
2. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.77m AHD or waterproofed to this level; and
3. The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.77m AHD.
4. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.77m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.77m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure vulnerable components of the development are built at the appropriate level.

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. **Sediment and Erosion Controls**
<u>For developments that include more than 2500sqm of disturbance</u>:

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

<u>For sites larger than 250sqm and less than 2500sqm of disturbance</u>:

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

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

The ESCP must include the following as a minimum:

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

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

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

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

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. **Tree and vegetation protection**

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

i) all prescribed trees within the site

ii) all trees and vegetation located on adjoining properties

iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with AS4970-2025 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment, and in particular section 6 and appendix 7.2 and 7.8
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 of AS4970-2025 Protection of trees on development sites
ix) the activities listed in section 4 of AS4970-2025 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:
c) The arboricultural works listed in a) and b) are undertaken as complaint to AS4970-2025 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment and/or Project Arborist as applicable.

Reason: Tree and vegetation protection.

15. **Wildlife Protection**
If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

16. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected

by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

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

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

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

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

20. **Stockpiling materials**
During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

21. **Pollution Control**
Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the stormwater network and/or receiving waterways.

Reason: To ensure that building associated chemicals and pollutants don't enter the surrounding environment.

22. **Aboriginal Heritage - Unexpected Finds / Stop Work Clause**
If any suspected Aboriginal site, objects, or cultural materials are uncovered during works an Unexpected Finds protocol must be followed:
1. All work must cease immediately in the vicinity of the find.
2. The area must be made safe and protected from further disturbance.
3. The Aboriginal Heritage Office must be contacted as soon as practicable for advice.
4. If the material is confirmed as Aboriginal, the appropriate NSW heritage authority and the relevant Aboriginal Land Council must be notified in accordance with relevant legislation, and works must not recommence until appropriate authorisation is provided.
If human remains are uncovered during construction or earthworks:
1. All works must cease immediately in the vicinity of the find.
2. The area must be secured and protected from further disturbance.
3. NSW Police must be contacted immediately, in accordance with statutory requirements.
4. Works must not recommence unless authorised by NSW Police and relevant authorities.

Reason: Aboriginal Heritage Protection

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

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

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

Reason: To protect wildlife habitat.

24. **No Weeds Imported On To The Site**
No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

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

25. **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.

26. **Waste Disposal Verification Statement**
On completion of demolition work:

- a signed statement must be submitted to the Certifier verifying that demolition work, and any recycling of materials, was undertaken in accordance with the waste

management plan approved under this consent, and
- if the demolition work involved the removal of asbestos, an asbestos clearance certificate issued by a suitably qualified person, must be submitted to the Certifier within 14 days of completion of the demolition work.

Reason: To provide for the submission of a statement verifying that demolition waste management and recycling has been undertaken in accordance with the approved waste management plan.

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

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

Reason: To protect wildlife habitat.

28. **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.

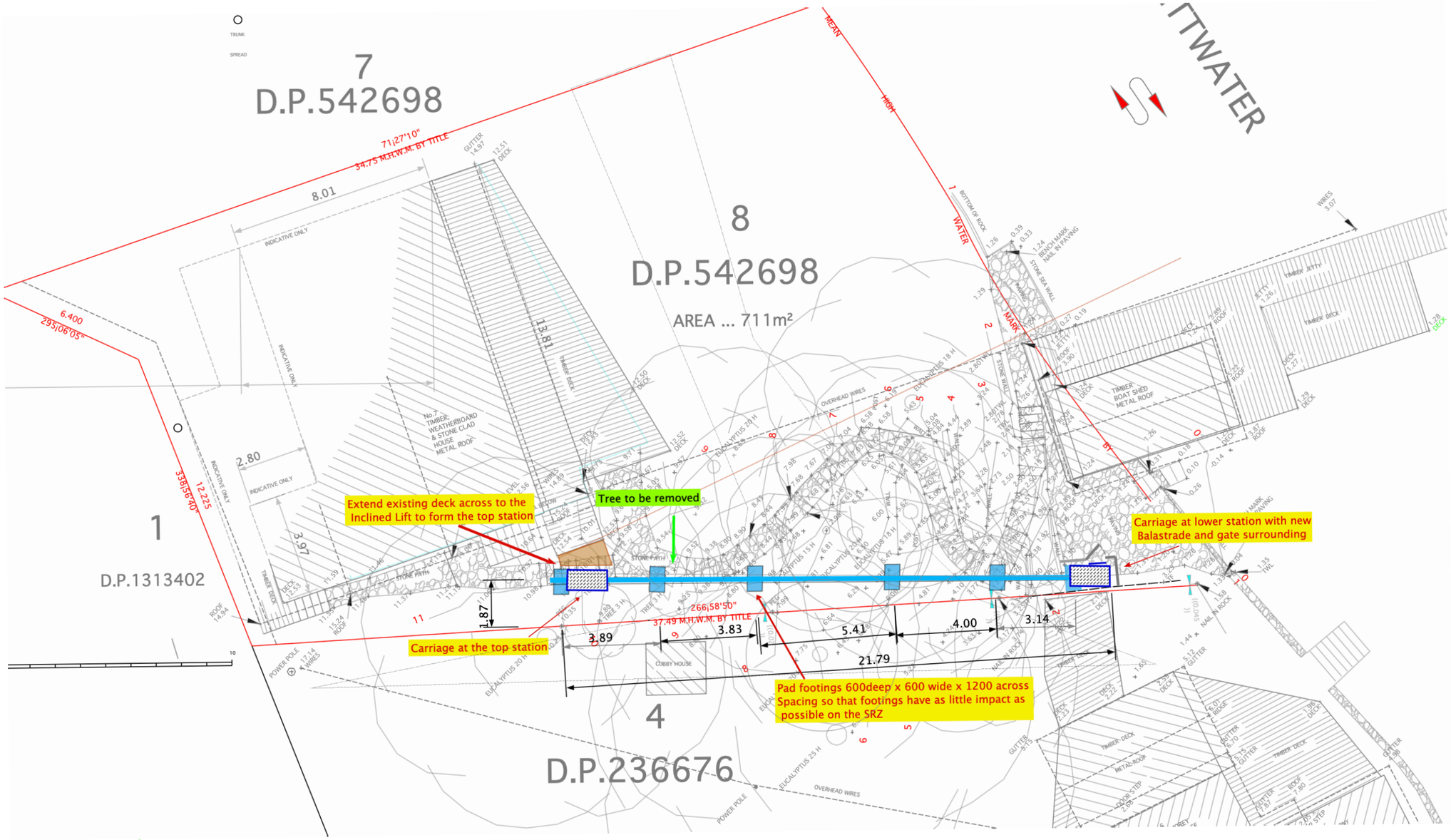
Reason: To protect native wildlife and habitat.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

30. **Inclinator Noise**
The inclinator must be installed and operated at all times so as not to cause ‘offensive noise’, this being that noise levels produced will not exceed 60dB(A) when measured one metre from any adjoining premises.

Reason: To ensure compliance and the maintenance of residential amenity



- NO EXISTING WATERWAYS OR WATERCOURSES ONSITE
-NO VEGETATION AFFECTED
-EXCAVATION AS SHOWN ON ELEVATIONS
-STORMWATER TO BE DIRECTED INTO EXISTING SYSTEM
-WATER RETICULATION FROM EXISTING MAINS
-SEWERAGE TO BE DIRECTED INTO EXISTING SEWER MAINS

-All works to carried out according to the BCA, Local Council building approval, relevant governing statutory authorities and minimum standards of construction.
- Figured dimensions in preference to any scale.
- The builder is to be responsible for building details, construction methods and set out.
- The builder is to check all dimensions and levels for accuracy prior to start.
- The builder is to arrange separate engineers details and or inspections required.
- Existing footings and structure to be certified by engineers to withstand loads.
- Entire structure and stability of addition to be certified by Engineer.

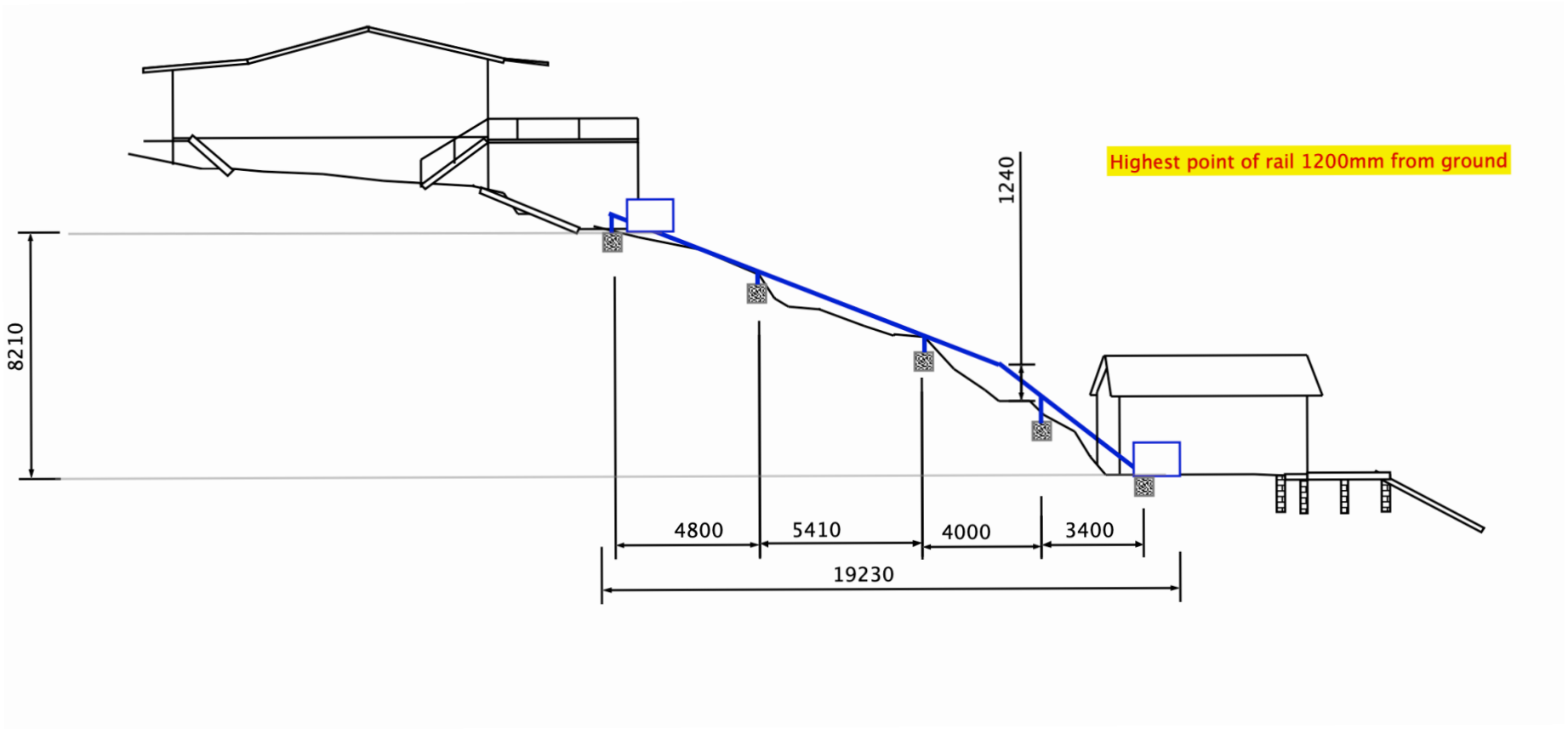
REV.	AMMENDMENT	DATE

Inclined Lifts Pty Ltd.
ABN 52 627 151 857
Unit F,
59-61 Waratah Rd.
Kirrawee NSW 2232
1300 798 392

PROPOSED INCLINED LIFT AND LANDINGS

Client: Mr. and Mrs Bayliss
Address: 7 The Chase
Lovett Bay NSW

Scale: 1:200 | Date: 25.5.26 | Revision: | Drawing No. 066-01-1



- NO EXISTING WATERWAYS OR WATERCOURSES ONSITE
-NO VEGETATION AFFECTED
-EXCAVATION AS SHOWN ON ELEVATIONS
-STORMWATER TO BE DIRECTED INTO EXISTING SYSTEM
-WATER RETICULATION FROM EXISTING MAINS
-SEWERAGE TO BE DIRECTED INTO EXISTING SEWER MAINS

-All works to carried out according to the BCA, Local Council building approval, relevant governing statutory authorities and minimum standards of construction.
- Figured dimensions in preference to any scale.
- The builder is to be responsible for building details, construction methods and set out.
- The builder is to check all dimensions and levels for accuracy prior to start.
- The builder is to arrange separate engineers details and or inspections required.
- Existing footings and structure to be certified by engineers to withstand loads.
- Entire structure and stability of addition to be certified by Engineer.

REV.	AMMENDMENT	DATE

Inclined Lifts Pty Ltd.
ABN 52 627 151 857
Unit F,
59-61 Waratah Rd.
Kirrawee NSW 2232
1300 798 392

PROPOSED INCLINED LIFT AND LANDINGS

Client: Mr. and Mrs Bayliss
Address: 7 The Chase, Lovett Bay NSW
DP 542698

Scale:	Date:	Revision:	Drawing No.
1:200	26.1.26		066-2

INCLINED LIFTS PTY LTD

CLAUSE 4.6
WRITTEN REQUEST

Exception to Clause 7.8 - Limited development on foreshore area

Development	Construction of an inclined lift, associated access platforms, safety balustrades and minor landscape works
Land	Lot 8 DP 542698
Address	7 The Chase, Lovett Bay NSW 2105
Application	DA2026/0424 - PAN-627647
Environmental planning instrument	Pittwater Local Environmental Plan 2014
Development standard	Clause 7.8 - Limited development on foreshore area
Prepared by	Inclined Lifts Pty Ltd
Date	13 August 2026

Prepared to accompany the development application presently before Northern Beaches Council.

Executive summary

This written request is made under Clause 4.6 of the Pittwater Local Environmental Plan 2014 (PLEP 2014). It seeks consent for the proposed inclined lift and associated components that extend into the mapped foreshore area and therefore contravene the non-numerical development standard in Clause 7.8(2).

The variation arises from the functional purpose of the development and the physical circumstances of the site. The property is accessible only by water and the dwelling is separated from the waterfront by steep terrain. The lift provides a safe, continuous and step-free connection between the dwelling and the site's sole transport access. A compliant alignment wholly landward of the foreshore building line would not connect to the waterfront and would defeat the essential purpose of the lift.

The proposal nevertheless achieves the objectives of Clause 7.8. It is a narrow, low-profile and visually recessive structure aligned close to the existing landform; it remains wholly on private land landward of the Mean High Water Mark; it does not obstruct or diminish public access; and it is designed to avoid adverse effects on foreshore processes, the waterway, adjoining land and significant vegetation. The accompanying geotechnical, arboricultural and bushfire assessments support the suitability of the works, subject to their recommendations.

For the reasons developed below, strict compliance is unreasonable and unnecessary in this case and there are sufficient environmental planning grounds to justify the contravention. The consent authority may therefore exercise the flexibility available under Clause 4.6.

1. Purpose and statutory context

This request accompanies DA2026/0424 - PAN-627647 for an inclined lift at 7 The Chase, Lovett Bay. It addresses the requirements of Clause 4.6 of PLEP 2014 in relation to the proposed contravention of Clause 7.8.

Clause 4.6 permits development consent to be granted despite a contravention of a development standard where the consent authority is satisfied that the applicant has demonstrated that compliance is unreasonable or unnecessary in the circumstances and that sufficient environmental planning grounds justify the contravention. The clause is intended to provide an appropriate degree of flexibility and achieve better outcomes for and from development.

This request should be read with the submitted Statement of Environmental Effects, Site Plan 066-01, elevation drawings and the specialist reports lodged with the application.

2. Site and locality

Matter	Site-specific detail
Property	7 The Chase, Lovett Bay NSW 2105
Legal description	Lot 8 DP 542698
Site area	Approximately 711 m²
Zone	C3 Environmental Management under PLEP 2014
Access	No public road frontage; access is by water from Pittwater
Existing development	Single-storey timber, weatherboard and stone-clad dwelling with metal roof, established landscaping and waterfront structures
Landform	Steeply sloping land between the dwelling and Lovett Bay
Relevant constraints	Mapped foreshore area, estuarine/coastal risk, bushfire-prone land, biodiversity and geotechnical considerations

The water-access-only character of Lovett Bay is a central planning circumstance. The waterfront is not simply a recreational part of the site; it is the point from which residents and visitors arrive and depart. The steep change in level between that point and the dwelling creates a genuine accessibility and safety constraint.

3. Proposed development

The proposal comprises one inclined lift connecting the vicinity of the existing dwelling with the waterfront, together with top and lower platforms, safety balustrades and minor landscape works. The lift is a non-habitable Class 10b structure ancillary to the existing dwelling house.

- The rail is aligned generally along the fall of the land and is kept as close to natural ground level as practicable.
- The structure has a narrow footprint and requires only localised footings and minor excavation.
- Natural and muted finishes are proposed to reduce visual prominence from adjoining properties and the waterway.
- One tree of low retention value is proposed for removal; significant vegetation is otherwise retained subject to the arborist's recommendations.
- Flood-compatible materials are used below 2.77 m AHD; electrical equipment is located or protected above that level, and control systems are housed at the top station at approximately 12.55 m AHD.
- An automatic-return function returns the carriage to the upper station following inactivity, reducing exposure to tidal or storm-surge conditions.

4. Development standard and extent of variation

4.1 Clause 7.8 - Limited development on foreshore area

Clause 7.8 applies to land between the foreshore building line and the Mean High Water Mark or other relevant boundary shown on the Foreshore Building Line Map. Its objectives are:

(a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area; and
(b) to ensure continuous public access along the foreshore area and to the waterway.

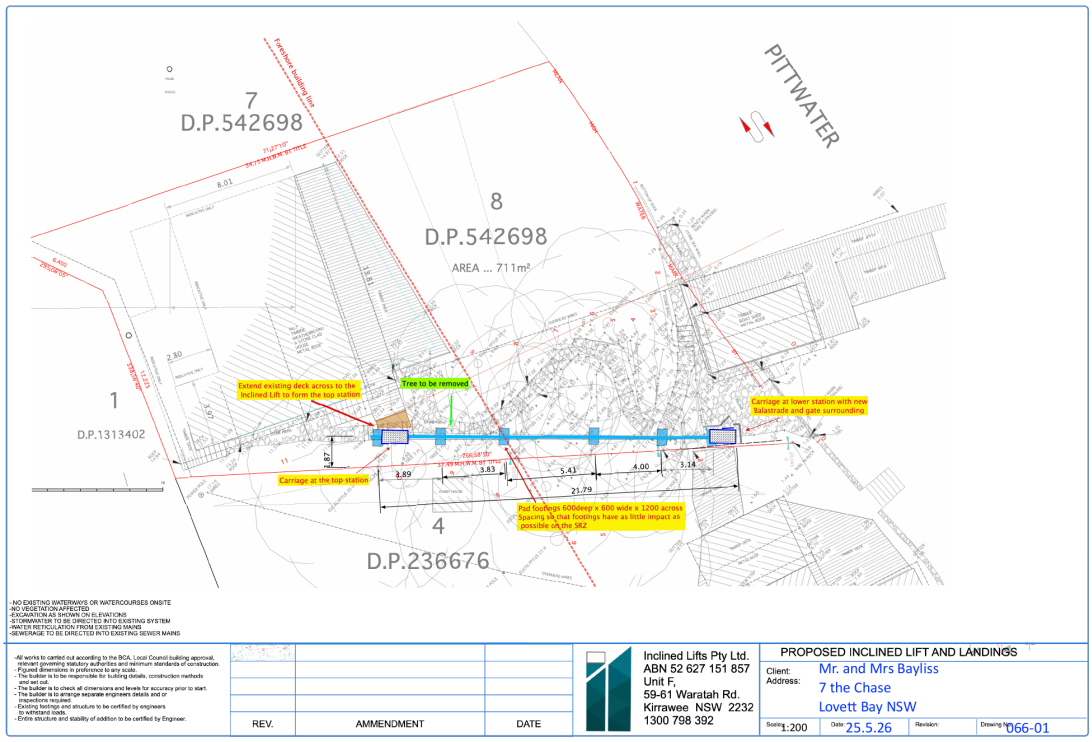
Clause 7.8(2) generally prevents development in the foreshore area except for specified purposes, including certain alterations to existing buildings and listed foreshore or recreation structures. An inclined lift is not expressly listed. To the extent that the proposed lift and its associated components are located within the mapped foreshore area, the proposal contravenes this non-numerical development standard.

4.2 Nature and extent of contravention

The foreshore building line crosses the proposed lift alignment, as shown on Site Plan 066-01. The portion of the lift seaward of that line - including part of the rail and supporting components and the lower access arrangement - is within the mapped foreshore area. All works remain within the surveyed boundaries of Lot 8 and landward of the Mean High Water Mark.

Because Clause 7.8 is a prohibition expressed by development type rather than a dimensional limit, the variation cannot meaningfully be stated as a percentage. Its extent is properly described by identifying the components within the mapped foreshore area and assessing their environmental consequences.

Figure 1 - Site plan and foreshore building line



Source: Site Plan 066-01, Inclined Lifts Pty Ltd, dated 25 May 2026. The dashed red line denotes the foreshore building line and the blue alignment denotes the inclined lift.

5. Compliance is unreasonable or unnecessary

5.1 The objectives of Clause 7.8 are achieved

The first and most directly applicable method identified in Wehbe v Pittwater Council [2007] NSWLEC 827 is satisfied: the objectives of the standard are achieved notwithstanding the contravention.

Objective (a): natural foreshore processes, significance and amenity

The proposal will not materially affect natural foreshore processes or the significance and amenity of the area for the following reasons:

- The structure is narrow, open and elevated on discrete supports, rather than a broad building platform or enclosed foreshore building.
- It follows the slope and is positioned close to existing ground, limiting excavation, fill and interruption of surface flows.
- It remains landward of the Mean High Water Mark and does not project into or occupy the waterway.
- The submitted geotechnical assessment confirms that the site can accommodate the structure subject to footing, anchoring, corrosion-protection and construction recommendations.

- Flood-compatible materials, elevated/protected electrical components and the automatic return of the carriage respond directly to estuarine exposure.
- The lift does not obstruct tidal or overland flows, alter wave action or require a sea wall, reclamation or modification of the shoreline.
- The retention of established vegetation, apart from one low-retention tree, together with muted finishes and the low-profile alignment, maintains the landscaped foreshore character and filters views from Pittwater.
- The proposal is ancillary to one existing dwelling and does not intensify the residential use, increase population density or generate a new destination in the foreshore area.

Objective (b): continuous public access

The proposal does not compromise continuous public access along the foreshore or access to the waterway. The works are wholly within private land and do not extend below the Mean High Water Mark. They do not close, divert or narrow a public reserve, public path, right of way or established public foreshore route. The narrow rail alignment does not create a barrier along the shoreline or prevent navigation of the adjoining waterway.

Accordingly, the two express objectives of Clause 7.8 are achieved notwithstanding the proposed development type not being listed in Clause 7.8(2). Requiring strict compliance would produce no additional environmental or public-access benefit in the circumstances.

5.2 Other Wehbe pathways

It is not necessary to establish every recognised pathway. The applicant does not contend that the objectives of Clause 7.8 are irrelevant, that Council has abandoned the standard or that the C3 zoning is inappropriate. Rather, the request relies principally on achievement of the standard's objectives and on the particular environmental planning grounds set out below.

6. Sufficient environmental planning grounds

The following grounds are particular to the development and site and, taken together, are sufficient to justify the contravention.

1. Essential connection on a water-access-only property. The waterfront is the property's sole practical transport interface. A lift stopping at the foreshore building line would not connect the dwelling to the arrival and departure point and would not perform its essential access function.
2. Exceptional topography and safety. The steep terrain creates a materially constrained pedestrian route between the dwelling and the water. The lift provides a safer, continuous and step-free alternative for occupants and visitors, including people with limited mobility.
3. A compliant alternative would defeat the purpose. Moving the lift wholly landward of the foreshore building line would sever the connection to the waterfront. The contravention is therefore a direct and unavoidable consequence of the legitimate function of a waterfront access lift, not an attempt to obtain additional floor area or recreational building bulk.
4. Minimal and reversible physical footprint. The rail and supports occupy a narrow corridor and require localised foundations, with no habitable floor area, roofed building mass, shoreline reclamation or broad excavation.
5. Responsive engineering and coastal design. The proposal incorporates geotechnical recommendations, corrosion protection, flood-compatible construction, protected electrical systems and automatic carriage return. These measures reduce risk without changing natural foreshore processes.

6. Protection of landscape and biodiversity values. The alignment and low-profile design minimise vegetation disturbance and visual exposure. One low-retention tree is removed, while significant vegetation is retained and protected in accordance with the arboricultural assessment. The submitted material states that the removed tree is outside the Biodiversity Values Map area.
7. No public-access or waterway impact. The works remain on private land above Mean High Water Mark and neither obstruct a public foreshore route nor interfere with navigation, water access or use of the bay.
8. Orderly and economic use of land. The development provides necessary access to an existing lawful dwelling without intensifying land use and in a form suited to the locality's boat-only access and steep terrain.

These are not generic benefits capable of applying to any development. They arise from the unique combination of boat-only access, steep topography, the location of the existing dwelling and the narrow, open form of the proposed lift.

7. Additional Clause 7.8 considerations

Consideration	Assessment
Appearance from the waterway	The rail is narrow and low profile, follows the landform and uses muted finishes. Existing vegetation provides filtering. It will remain visually subordinate to the landscape and existing waterfront development.
Continuous public access	No public land, public path or foreshore reserve is occupied or obstructed. All components remain within private property and landward of Mean High Water Mark.
Environmental impact	Localised supports and minimal excavation avoid substantial alteration of landform, drainage, tidal movement or wave action. Specialist recommendations are to be observed.
Congestion or conflict	The lift serves one dwelling and introduces no public venue or intensified use. It will not cause congestion or conflict between users of open space or the waterway.
Future access opportunities	The narrow alignment does not sterilise the shoreline or prevent any reasonable future public-access opportunity. No existing public-access opportunity is compromised.
Historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance	No identified heritage item is affected. The low-impact design, limited clearing and retention of the natural setting maintain the foreshore's environmental and aesthetic significance.

8. Consistency with the C3 zone objectives

The development remains consistent with the objectives of the C3 Environmental Management zone:

- Environmental values are protected through a small footprint, minimal excavation, retention of significant vegetation and implementation of specialist recommendations.
- The lift is ancillary to the existing dwelling and is compatible with the environmental capabilities of the land.
- The proposal does not introduce an intensive land use, additional dwelling or commercial activity.
- Its siting and design respond to the landscape, coastal exposure and geotechnical setting rather than imposing conventional building bulk on the foreshore.
- The accessibility benefit supports the continued reasonable residential use of a property whose only transport access is by water.

9. Environmental Planning and Assessment Act objects

The variation facilitates the orderly and economic use of land by providing safe access to an existing dwelling in a manner tailored to the site. It supports ecologically sustainable development through a limited footprint, retention of vegetation, minimal earthworks and management of geotechnical and coastal risks. The proposal also demonstrates good design by aligning a necessary piece of access infrastructure with the topography and minimising its visual and physical presence.

10. Public interest and planning outcome

Approval of the variation would not undermine the integrity of Clause 7.8. The proposal is a site-responsive access structure with no material adverse effect on the matters the standard is intended to protect. The outcome is consistent with the standard's objectives and the C3 zone objectives, while providing a substantial accessibility and safety benefit on a uniquely constrained property.

Conversely, rigid compliance would prevent the lift from reaching the waterfront, remove the practical benefit of the development and achieve no discernible improvement to foreshore processes, scenic quality or public access. The circumstances therefore warrant the measured flexibility contemplated by Clause 4.6.

11. Conclusion

This written request demonstrates that:

- Clause 7.8 is a non-numerical development standard capable of variation under Clause 4.6;
- the proposed inclined lift contravenes Clause 7.8 only because components necessary to connect the dwelling with the waterfront extend into the mapped foreshore area;
- compliance is unreasonable and unnecessary because the objectives of Clause 7.8 are achieved notwithstanding the contravention;
- there are sufficient, site-specific environmental planning grounds to justify the contravention;
- the proposal remains consistent with the C3 Environmental Management zone objectives; and
- the variation produces a better planning outcome without material adverse environmental, visual, amenity or public-access impacts.

Northern Beaches Council may therefore be satisfied that the requirements of Clause 4.6 have been met and may grant consent to DA2026/0424 - PAN-627647 notwithstanding the proposed contravention of Clause 7.8 of PLEP 2014.

Documents relied upon

- Statement of Environmental Effects - Construction of New Inclined Lift, 7 The Chase, Lovett Bay, prepared by Inclined Lifts Pty Ltd.
- Site Plan 066-01 - Proposed Inclined Lift and Landings, dated 25 May 2026.
- Submitted elevation drawings and site survey.
- Geotechnical report prepared by BMB Engineers.
- Arboricultural assessment prepared by Treespaces Pty Ltd.
- Bushfire assessment prepared by Bushfire Planning Services Pty Ltd.
- Pittwater Local Environmental Plan 2014, including Clauses 4.6 and 7.8.

ITEM 5.3 MOD2026/0314 - 32 GOLF AVENUE MONA VALE - MODIFICATION OF DEVELOPMENT CONSENT DA2025/0447 GRANTED FOR DEMOLITION WORKS & CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING CONTAINING 11 UNITS WITH BASEMENT CAR PARKING, SWIMMING POOL & ASSOCIATED SITE WORKS

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Clause 4.5A Density controls for certain residential accommodation of the Pittwater Local Environmental Plan 2014 (PLEP 2014) 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 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.

The Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2026/0314 for Modification of Development Consent DA2025/0447 granted for demolition works and construction of a residential flat building containing eleven (11) units with basement car parking, swimming pool and associated site works at Lot 3 SP 57603, 3 / 32 Golf Avenue MONA VALE NSW 2103, Lot 1 SP 57603, 1 / 32 Golf Avenue MONA VALE NSW 2103, Lot 2 SP 57603, 2 / 32 Golf Avenue MONA VALE NSW 2103, Lot 4 SP 57603, 4 / 32 Golf Avenue MONA VALE NSW 2103, Lot 1 SP 57603, 1 / 32 Golf Avenue MONA VALE NSW 2103, Lot 3 SP 57603, 3 / 32 Golf Avenue MONA VALE NSW 2103, Lot CP SP 57603, 32 Golf Avenue MONA VALE NSW 2103, Lot 2 SP 57603, 2 / 32 Golf Avenue MONA VALE NSW 2103, Lot 4 SP 57603, 4 / 32 Golf Avenue MONA VALE NSW 2103 subject to the conditions set out in the Assessment Report.

Reporting manager:	Executive Manager Development Assessment
Attachments:	1. Assessment Report [**5.3.1** - 36 pages] 2. Site Plans & Elevations [**5.3.2** - 4 pages]

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2026/0314

Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 3 SP 57603, 3 / 32 Golf Avenue MONA VALE NSW 2103 Lot 1 SP 57603, 1 / 32 Golf Avenue MONA VALE NSW 2103 Lot 2 SP 57603, 2 / 32 Golf Avenue MONA VALE NSW 2103 Lot 4 SP 57603, 4 / 32 Golf Avenue MONA VALE NSW 2103 Lot 1 SP 57603, 1 / 32 Golf Avenue MONA VALE NSW 2103 Lot 3 SP 57603, 3 / 32 Golf Avenue MONA VALE NSW 2103 Lot CP SP 57603, 32 Golf Avenue MONA VALE NSW 2103 Lot 2 SP 57603, 2 / 32 Golf Avenue MONA VALE NSW 2103 Lot 4 SP 57603, 4 / 32 Golf Avenue MONA VALE NSW 2103
Proposed Development:	Modification of Development Consent DA2025/0447 granted for demolition works and construction of a residential flat building containing eleven (11) units with basement car parking, swimming pool and associated site works
Zoning:	R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Applicant:	The Trustee For Laxdtx 2 Unit Trust

Application Lodged:	15/06/2026
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	27/08/2026 to 10/09/2026
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This application is for the modification of Development Consent DA2025/0447 granted for demolition works and construction of a residential flat building containing eleven (11) units with basement car parking, swimming pool and associated site works.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation of more than 10% to Clause 4.5A Density controls for certain residential accommodation of the Pittwater Local Environmental Plan 2014 (PLEP 2014). The application has been made under Section 4.56 of the Environmental Planning and Assessment Act 1979, which authorises the development for which consent was granted to be modified, notwithstanding any breach of development standards. As such, no document pursuant to Section 35B of the Environmental Planning and Assessment Regulation 2021 or Clause 4.6 is required. Notwithstanding, the proposed modification results in a reduction in the extent of variation to Clause 4.5A Density controls for certain residential accommodation. That is, the previous application approved 1 dwelling per 126.9m^2 and the modification proposes 1 dwelling per 139.6m^2. As such, the variation is supported as it provides an improvement.

The application has been publicly exhibited from 29 June 2026 to 13 July 2026 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan. No submissions were received during this period.

Further information was requested in relation to urban design specifically in regards to the level 3 front balcony and its appearance to the streetscape. Amended plans were provided which removed the privacy screen from the north-western side, pulled the form back 0.5m from the street edge, reduced the width of the concrete column on the north-western side, and removed the steel column on the south-eastern side. Ultimately, the amendments provide a lighter and more visually permeable design that is found to be acceptable. The amended plans also included internal reconfigurations to unit 10 and window changes. Consequently, the amended plans have been publicly exhibited from 27 August 2026 to 10 September 2026 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan. Two submissions were received during this period raising concerns regarding the street presentation and parking.

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 NBLPP grant approval to the modification application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The modification proposes the following amendments to the approved development:

- Assigning one additional garage to unit 7.
- Renumbering of assigned garages as now 10 units not 11.
- Renumbering of units 9-11 to be units 8-10.
- Small adjustments to the alignment of a column at front.
- Removal of a window in unit 6 due to altered building form above.

- Unit 7 and Unit 8 combined into one penthouse unit. Balcony of unit 8 now made into a bedroom and the unit 7 balcony has now grown in size by indenting the façade alignment. Unit 7 has minor window adjustments due to these layout changes.
- Unit 10 (previously 11) has an updated layout including minor window amendments due to these layout changes.
- Roof over unit 7 balcony added including one column.
- Amendment to Condition 81 regarding the location of the door to the waste room.

Application History
Additional information was requested in relation to the street presence of the upper level balcony and roof. The applicant submitted amended plans in response altering the roof form and side columns of the balcony. The amended plans were re-notified from 27 August 2026 to 10 September 2026.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - B2.5 Dwelling Density and Subdivision - Medium Density Residential
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - D9.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D9.7 Side and rear building line
Pittwater 21 Development Control Plan - D9.9 Building envelope
Pittwater 21 Development Control Plan - D9.10 Landscaped Area - General

SITE DESCRIPTION

Property Description:	Lot 3 SP 57603 , 3 / 32 Golf Avenue MONA VALE NSW 2103 Lot 1 SP 57603 , 1 / 32 Golf Avenue MONA VALE NSW 2103 Lot 2 SP 57603 , 2 / 32 Golf Avenue MONA VALE NSW 2103 Lot 4 SP 57603 , 4 / 32 Golf Avenue MONA VALE NSW 2103 Lot 1 SP 57603 , 1 / 32 Golf Avenue MONA VALE NSW 2103 Lot 3 SP 57603 , 3 / 32 Golf Avenue MONA VALE NSW 2103 Lot CP SP 57603 , 32 Golf Avenue MONA VALE NSW 2103 Lot 2 SP 57603 , 2 / 32 Golf Avenue MONA VALE NSW 2103 Lot 4 SP 57603 , 4 / 32 Golf Avenue MONA VALE NSW 2103
Detailed Site Description:	The subject site consists of one allotment located on the north-eastern side of Golf Avenue. The site is legally described as Lots 1, 2, 3, 4, CP SP 57603. The site is rectangular in shape with a frontage of 19.81m along Golf Avenue and a depth of 70.41m. The site has an area of 1395.5m². The site is zoned R3 Medium Density Residential pursuant to the Pittwater Local Environmental Plan 2014. The site presently accommodates a multi-dwelling housing development containing 4 dwellings with a height of 2 storeys. The site slopes approximately 3.3m from front to rear. Landscaping is generally limited to areas adjoining the side boundaries and comprises 12 trees in addition to hedging and small plants. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential flat building and multi-dwelling housing developments generally 2 storeys in height with basement car parking. Mona Vale Golf Club is located across Golf Avenue to the south-west. The Mona Vale commercial centre lies approximately 400m to the north-west of the site.

Map:



SITE HISTORY

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

- **DA2024/0190** - Development Application for Demolition works and construction of a residential flat building. Approved 28 August 2024.
- **Mod2024/0679** - Modification of Development Consent DA2024/0190 granted for Demolition works and construction of a residential flat building. Approved 30 January 2025.
- **DA2025/0447** - Development Application for Demolition works and construction of a residential flat building containing eleven (11) units with basement car parking, swimming pool and associated site works. Approved by the Land and Environment Court 21 April 2026.

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 for DA2025/0447, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	**Comments**
(1) 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 development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2025/0447.
(b) 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.

Section 4.56- Other Modifications	Comments
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2025/0447.
(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 4.56 (1A) of the Environmental Planning and Assessment Act 1979, in determining a modification application made under Section 4.56 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Section 4.15(1) is addressed in the table below.

The reasons given by the consent authority for the grant of the consent that is sought to be modified is discussed as follows:

Comment on reasons for determination of DA2025/0447:

A Class 1 appeal against the deemed refusal of DA2025/0447 was lodged on 13 June 2025.

At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. The Council is satisfied that all contentions raised in the Amended Statement of Facts and Contentions filed 19 February 2026 and the matters raised by the resident objectors are satisfactorily addressed by the amended application and the conditions of consent.

The Judgement states:
"I have considered the submissions made by the Council in the Jurisdictional Statement filed with the Court on 9 April 2026 and I am satisfied on the basis of the evidence before me that the agreement of the parties is a decision that the Court could have made in the proper exercise of its functions."

The reasons for the granting of the original consent have been considered in the assessment of this modification application. The proposed changes will result in a modified development that will not conflict with the original reasons for the granting of consent.

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	See detailed assessment under “DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS” below.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to urban design. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (b) – the significant likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) 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.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

Draft Northern Beaches Local Environmental Plan (Draft LEP)

Definition(s): r*esidential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.*

Land Use Zone: R3 Medium Density Residential

Permissible or Prohibited: Permissible

Additional Permitted used for particular land – Refer to Schedule 1: Not applicable

A detailed assessment against the proposed numerical provisions and development standards has not been undertaken as part of this report. However, broad consideration has been given to the Draft LEP, and the proposal is consistent with its relevant aims and objectives.

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 27/08/2026 to 10/09/2026 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:
Gary Leslie West	19 / 25 - 31 Darley Street East MONA VALE NSW 2103
Ms Jaqueline Margaret Clinton	15 / 34 - 36 Golf Avenue MONA VALE NSW 2103

The following issues were raised in the submissions:

- ***Street Presentation***

  The submissions raised concerns that the increased size of the level 3 balcony and addition of a roof increases the dominance of the upper level and adversely affects the building's street presentation. Concern is raised that the modification plan diminished the lightweight and recessive character of the approved upper level and appears bulkier and more block like when viewed from Golf Avenue. Concerns are also raised that the modification indicates a strategy to increase the scale of the development by incremental modification applications following approval of the initial development.

  Comment:

  Additional information was requested from the applicant as the plans originally proposed under the modification were contrary to the approved design which included a recessed upper level. Amended plans were submitted in response which improve the building’s presentation to the street through the removal of the privacy screen and reduction in column size, resulting in a lighter and more visually permeable upper level. Modification applications undergo a full assessment against the planning controls consistent with the assessment of the development application. Notably, the consent authority must be satisfied that the modified development 'is the same or substantially the same' as the approved development as per Section 4.56(1)(a) of the EPA Act which has been demonstrated.

- ***Parking***

  The submissions raised concerns that street parking is at capacity along Golf Avenue and surrounding streets. The submission requests a reassessment of the number of visitor parking spaces.

  Comment:

  The modification does not propose any changes to the number of off-street parking spaces, only a reallocation of spaces due to the consolidation of units 7 and 8.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	***Referral completed - no conditions required*** The applicant seeks approval to modify an approved development. The proposed modification does not involve any changes to the approved stormwater management system or site access arrangements. Accordingly, no objection is raised from a Development Engineering perspective, and no additional Development Engineering conditions are required.

Internal Referral Body	Comments
Strategic and Place Planning (Urban Design)	***Referral completed - no conditions required*** 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 to modify the previously approved proposal under MOD2026/0314, comprising: - Updated balcony design - Amendments to Unit 10 layout The proposed amendments improve the building's presentation to the street through the removal of the privacy screen and reduction in column size, resulting in a lighter and more visually permeable upper level. The revised Unit 10 layout also improves internal amenity. Urban Design raises no further objection to the proposed development. **Previous advice dated 26 June 2026:** The application seeks to amend the previously approved proposal (DA2025/0447) through the following modifications: • Consolidation of Units 7 and 8 to create a single penthouse dwelling. • Re-numbering of units and associated parking spaces. • Enlargement of the upper level street-facing balcony and the addition of a balcony roof to improve weather protection and amenity. • Balcony adjustments to Units 3 and 5. • Deletion of a living room window. The proposed increase in the upper level balcony from approximately 12m² (approved) to 22m² (proposed), together with the introduction of a roof structure, alters the presentation of the building to the street. While the side setback to the upper level provides articulation, the enlarged balcony and roof increase the visual prominence of the top storey, resulting in the building being read as a four-storey form. The approved design sought to minimise the perceived scale of the development by presenting as a predominantly three-storey building with a lightweight and recessive upper level. The proposed modifications diminish this design outcome by increasing the apparent bulk and visual dominance of the uppermost level when viewed from the Golf Parade. It is recommended that the upper level balcony be reduced in depth and pulled further back from the building line to reinforce the recessive character of the top storey. Similarly, the balcony roof should be limited to the portion necessary to provide functional weather protection, rather than extending across the full balcony width. These amendments would better maintain the architectural intent of the approved scheme while still delivering improved private open space amenity for the penthouse. Notwithstanding the above, the enlarged balcony itself does not result in any material increase in overlooking, privacy or overshadowing impacts.

Internal Referral Body	Comments
Traffic Engineer	***Referral completed - no conditions required*** MOD 2026/0314 to DA2025/0447 10 units - RFB (reduction of 1 unit) No change to provision of parking on site, only a reallocation of the additional 2 spaces to the penthouse allowing Unit 7 to have a total of 4 parking spaces. Existing conditions to apply. The proposal is therefore supported.
Waste Officer	***Referral completed - no conditions required*** MOD 2026/0314 to DA2025/0447 10 units - (reduction of 1 unit) No change to provision of waste storage. Existing conditions to apply.

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. 1792687M_06 dated 13 August 2026).

Where relevant, the embodied emissions have been quantified in the above BASIX Certificate.

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

SEPP (Housing) 2021

Chapter 4 Design of residential apartment development

Application of Chapter

Clause 144 of State Environmental Planning Policy Housing 2021 (SEPP Housing) stipulates that:

(1) This chapter applies to development only if:
  (a) the development consists of:
    (i) the erection of a new building,
    (ii) the substantial redevelopment or the substantial refurbishment of an existing building, or
    (iii) the conversion of an existing building, and
  (b) the building concerned is at least 3 or more storeys, not including underground car parking storeys, and
  (c) the building contains at least 4 dwellings.

As previously outlined the proposed modification relates to four storey residential apartment development plus two levels of basement car parking for the provisions of ten self-contained dwellings. As per the provisions of Clause 144 outlining the application of the policy, the provisions of Chapter 4 SEPP Housing are applicable to the assessment of this application.

As previously outlined within this report Clause 29 of the Environmental Planning and Assessment Regulation 2021 requires the submission of a Design Verification Statement from the qualified designer at lodgement of the development application. This documentation has been submitted with the development application.

Referral to design review panel for development applications

Clause 145 of SEPP Housing requires:

(2) Before determining the development application, the consent authority must refer the application to the design review panel for the local government area in which the development will be carried out for advice on the quality of the design of the development).

Comment: Northern Beaches Council has an appointed Design and Sustainability Advisory Panel (DSAP). Refer to the DSAP referral comments section within this report.

Referral to design review panel for modification applications

Clause 146 of SEPP Housing requires:

(2) If the statement by the qualified designer required to accompany the modification application under the Environmental Planning and Assessment Regulation 2021, section 102(1) does not verify that the qualified designer designed, or directed the design of, the original development, the consent authority must refer the modification application to the relevant design review panel for advice before determining the modification application.

Comment: The application is accompanied by a statement from the qualified designer that designed or directed the design of the original development application. As such, referral of the modification application to the design panel is not required.

(3) The consent authority may also refer a modification application for residential apartment development to the relevant design review panel for advice before determining the modification application.

Comment: Sub clause (3) allows Council to refer the modification to the design panel if they wish (even if accompanied by a statement by the original designer. However, given the minor nature of the changes this is not necessary in this circumstance.

Determination of development applications and modification applications for residential apartment development

Clause 147 of SEPP Housing requires that:

(1) Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—
(a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,
(b) the Apartment Design Guide,
(c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.

Comment: The below part of the report makes an assessment against the design quality principles contained within Schedule 9 (a) and an assessment is carried out against the ADG below (b).

Overall, the proposal meets the design quality principles of Schedule 9 for the reasons outlined below. The proposal appropriately responds to the design guidelines within the ADG and where strict compliance is not achieved numerical requirements, reasonable alterative solutions are provided to meet the objectives of the ADG.

Non-discretionary development standards for residential apartment development

Clause 148 of SEPP Housing contain non-discretionary development standards that, if complied with, prevent the consent authority from requiring more onerous standards for the matters (i.e 'must not refuse' standards).

The following are non-discretionary development standards under sub clause (2):

(a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide
(b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,
(c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Comment: As noted in the below assessment, the proposal meets the minimum requirements of the ADG in relation to Part 3J, 4D and 4C. This assessment has not required more onerous standards and does not recommend refusal of any of these reasons.

DESIGN QUALITY PRINCIPLES - Schedule 9

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.
Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:
The context and character of surrounding development predominantly consists of two to three storey medium density residential developments. The proposed development provides a four storey residential flat building with two levels of basement car parking. The site is subject to Chapter 6 Low and mid rise housing of the SEPP (Housing) 2021 which aims to encourage the development of low and mid rise housing in areas that are well located with regards to goods, services and public transport. The site is located in proximity of the nominated Mona Vale Town Centre, an area therefore identified for change and undergoing change. Evidently, the proposed development appears inconsistent with the existing context and neighbourhood character, however, the area is identified for change.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.
Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment:
The proposed development complies with the height and FSR requirements prescribed by Chapter 6 Low and mid rise housing of the SEPP (Housing) 2021.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.
Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:
The proposed development complies with the height and FSR requirements prescribed by Chapter 6 Low and mid rise housing of the SEPP (Housing) 2021.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment:
The development incorporates a number of passive and technological sustainable features including natural cross ventilation and solar panels.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment:
The proposed development provides deep soil landscaping in the front setback area, along the side and rear boundaries and between the two buildings. On-slab landscaped areas are also provided on the rooftop communal open space areas. The proposed landscaping scheme will appropriately soften the building and afford appropriate amenity for the future building occupants.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment:
Internally, the proposed development provides a high level of amenity in terms of ventilation, outlook and outdoor space. During the assessment of the original development application, amendments were made to ensure an appropriate level of amenity for neighbours in terms of solar access and visual privacy.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to

maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:
The proposal provides safe access points and allows passive surveillance.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment:
The development provides a mix of apartment typologies, which includes two, three and four bedroom apartments. The development contains a communal wine room providing opportunities for social interaction amongst residents.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:
The proposal incorporates a variety of materials, colours and textures and articulation to the front facade responding to the existing streetscape.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the ‘Apartment Design Guide’ as required by SEPP Housing.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		

<table>
<tr><td>Site Analysis</td><td>Does the development relate well to its context and is it sited appropriately?</td><td>Satisfactory - no change
Site is located within 400m of nominated Mona Vale town Centre within R3 zone surrounded by apartment buildings.</td></tr>
<tr><td>Orientation</td><td>Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?</td><td>Satisfactory - no change
Internal apartments and neighbouring properties receive acceptable levels of solar access.</td></tr>
<tr><td>Public Domain Interface</td><td>Does the development transition well between the private and public domain without compromising safety and security?

Is the amenity of the public domain retained and enhanced?</td><td>Satisfactory - no change
Frontage comprises fencing and screening to maintain public amenity.</td></tr>
<tr><td>Communal and Public Open Space</td><td>Appropriate communal open space is to be provided as follows:
1. Communal open space has a minimum area equal to 25% of the site
2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</td><td>Satisfactory on merit - no change
Approximately 7.9% COS provided within walkway seating areas and communal wine room. The site is located within close proximity to town centre, beach and public open spaces.</td></tr>
<tr><td>Deep Soil Zones</td><td>Deep soil zones are to meet the following minimum requirements:

<table>
<tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr>
<tr><td>Less than 650m^2</td><td>-</td><td rowspan="4">7%</td></tr>
<tr><td>650m^2 – 1,500m^2</td><td>3m</td></tr>
<tr><td>Greater than 1,500m^2</td><td>6m</td></tr>
<tr><td>Greater than 1,500m^2 with significant existing tree cover</td><td>6m</td></tr>
</table>
</td><td>Satisfactory - no change
22% at 3m dimensions</td></tr>
</table>

<table>
<tr>
<td>Visual Privacy</td>
<td>Minimum required separation distances from buildings to the side and rear boundaries are as follows:

<table>
<tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr>
<tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr>
<tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr>
<tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr>
</table>

Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</td>
<td>Satisfactory on merit - no change
Non-compliant at ground floor and level 1 - suitable privacy treatments have been installed to windows
Non-compliant at level 2 balcony - privacy screen installed.</td>
</tr>
<tr>
<td>Pedestrian Access and entries</td>
<td>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?

Large sites are to provide pedestrian links for access to streets and connection to destinations.</td>
<td>Satisfactory - no change
Pedestrian entry well-identified and provides clear path to both pavilions</td>
</tr>
<tr>
<td>Vehicle Access</td>
<td>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</td>
<td>Satisfactory - no change
Vehicle access well-sited and allows sight triangle for safety</td>
</tr>
</table>

Bicycle and Car Parking	For development in the following locations: • On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or • On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	**Satisfactory - no change** 22 resident spaces and 2 visitor spaces
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: • Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.	**Satisfactory** 90% achieve min 2 hours. No change to neighbouring dwellings.
	• A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	**Satisfactory - no change** No apartments receive no direct sunlight.

<table>
<tr><td rowspan="2">Natural Ventilation</td><td>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:

• At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</td><td>Satisfactory - no change
All apartments naturally cross-ventilated.</td></tr>
<tr><td>• Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</td><td>Satisfactory - no change</td></tr>
<tr><td>Ceiling Heights</td><td>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

<table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor

2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table></td><td>Satisfactory - no change

Habitable rooms: 2.7m
Non-habitable: 2.4m</td></tr>
</table>

<table>
<tr><td rowspan="9">Apartment Size and Layout</td><td>Apartments are required to have the following minimum internal areas:

<table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m2</td></tr><tr><td>1 bedroom</td><td>50m2</td></tr><tr><td>2 bedroom</td><td>70m2</td></tr><tr><td>3 bedroom</td><td>90m2</td></tr></table>
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m2 each.

A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m2 each.</td><td>Satisfactory
In excess.</td></tr>
<tr><td>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</td><td>Satisfactory</td></tr>
<tr><td>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</td><td>Satisfactory</td></tr>
<tr><td>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</td><td>Satisfactory</td></tr>
<tr><td>Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).</td><td>Satisfactory - no change</td></tr>
<tr><td>Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.</td><td>Satisfactory - no change</td></tr>
<tr><td>Living rooms or combined living/dining rooms have a minimum width of:
3.6m for studio and 1 bedroom apartments
4m for 2 and 3 bedroom apartments</td><td>Satisfactory - no change</td></tr>
<tr><td>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</td><td>Satisfactory - no change</td></tr>
</table>

<table>
<tr><td>Private Open Space and Balconies</td><td>All apartments are required to have primary balconies as follows:

<table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m2</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m2</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m2</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m2</td><td>2.4m</td></tr></table>
The minimum balcony depth to be counted as contributing to the balcony area is 1m</td><td>Satisfactory</td></tr>
<tr><td></td><td>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m2 and a minimum depth of 3m.</td><td>Satisfactory - no change</td></tr>
<tr><td>Common Circulation and Spaces</td><td>The maximum number of apartments off a circulation core on a single level is eight.</td><td>Satisfactory</td></tr>
<tr><td>Storage</td><td>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m2</td></tr><tr><td>1 bedroom apartments</td><td>6m2</td></tr><tr><td>2 bedroom apartments</td><td>8m2</td></tr><tr><td>3+ bedroom apartments</td><td>10m2</td></tr></table>
At least 50% of the required storage is to be located within the apartment.</td><td>Satisfactory - no change</td></tr>
<tr><td>Acoustic Privacy</td><td>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.</td><td>Satisfactory</td></tr>
<tr><td>Noise and Pollution</td><td>Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.</td><td>Satisfactory</td></tr>
<tr><td colspan="3">Configuration</td></tr>
</table>

Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	**Satisfactory** 2-4 bed apartments
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	**Satisfactory**
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	**Satisfactory** Amendments to the design of the unit 7 balcony - removed privacy screen, pulled back the roof form and removed steel column to increase openness of front facade.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	**Satisfactory** Rooftop used for common open space with terrace and pool.
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	**Satisfactory - no change**

<table>
<tr><td>Planting on Structures</td><td>When planting on structures the following are recommended as minimum standards for a range of plant sizes:

<table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m3</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m3</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m3</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table></td><td>Satisfactory - no change</td></tr>
<tr><td>Universal Design</td><td>Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features</td><td>Satisfactory - no change</td></tr>
<tr><td colspan="3">Performance</td></tr>
<tr><td>Energy Efficiency</td><td>Have the requirements in the BASIX certificate been shown in the submitted plans?</td><td>Satisfactory</td></tr>
<tr><td>Water Management and Conservation</td><td>Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?</td><td>Satisfactory - no change</td></tr>
<tr><td>Waste Management</td><td>Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?</td><td>Satisfactory</td></tr>
</table>

Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	**Satisfactory - no change**

Chapter 6 - Part 4 - Residential flat buildings and shop top housing

Clause 175 - Development standards—low and mid rise housing inner area	**Comment**
(2) Development consent must not be granted for development for the purposes of residential flat buildings with a building height of up to 22m unless the consent authority is satisfied the building will have 6 storeys or fewer.	Complies - 4 storeys
Clause 176 - Development standards—low and mid rise housing outer area	**Comment**
Clause 177 - Landscaping - residential flat buildings or shop top housing	Comment
Before granting development consent to development to which this section applies, the consent authority must consider the Tree Canopy Guide for Low and Mid Rise Housing, published by the Department in February 2025. The site requires a minimum of 7% of the site as deep soil area.	The site is within the inner LMR area as per the Town Centres Map and the Tree Canopy Guide has been considered. No changes are proposed to the previously approved deep soil area of 22%.
Division 2 Non-discretionary development standards—the Act, s 4.15	
Clause 180 - Non-discretionary development standards—residential flat buildings and shop top housing in Zone R3 or R4	Comment
(2) The following non-discretionary development standards apply in relation to development on land in a low and mid rise housing inner area:	
(a) a maximum floor space ratio of 2.2:1,	**Complies** 1.04:1
(b) a maximum building height of 22m,	17.4m - no change

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	17.4m	Unaltered	104.7%	**No** (Complies with SEPP)
Density controls for certain residential accommodation:	1 dwelling per 200m^2	1 dwelling per 126.9m^2	1 dwelling per 139.6m^2	30.2%	**No**

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.5A Density controls for certain residential accommodation	No
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Whilst the modification will result in a dwelling density that contravenes the maximum permitted by Clause 4.5A of the PLEP 2014, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.56 of the *Environmental Planning and Assessment Act 1979*, which authorises the development for which consent was granted to be modified, notwithstanding any breach of development standards. As such, no document pursuant to Section 35B of the *Environmental Planning and Assessment Regulation 2021* or Clause 4.6 is required.

Additionally, the proposed modification results in a reduction in the extent of variation to Clause 4.5A Density controls for certain residential accommodation. That is, the previous application approved 1 dwelling per 126.9m^2 and the modification proposes 1 dwelling per 139.6m^2. As such, the variation is supported as it

provides an improvement.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	Basement 1 and 2: 6.35m Bin Store: 3.9m Ground Floor: 9.0m Level 1: 7.7m Level 2: 7.7m Level 3: 7.7m Rooftop: 11.3m	Unaltered Unaltered Unaltered Unaltered Unaltered Level 3: 7.9m Unaltered	As Approved As Approved As Approved As Approved As Approved Yes As Approved
Rear building line	4.5m	6.0m	Unaltered	As Approved
Side building line	NW: 3m (where wall height is 3m or less) or S = 3 + H-2/4	Ground Floor: 3.0m-4.0m Level 1: 3.0m-4.5m Level 2: 3.0m-7.5m Level 3: 5.3m-7.5m Rooftop: 7.3m	Unaltered Unaltered Unaltered Unaltered Unaltered	As Approved As Approved As Approved As Approved As Approved
	SE: 3m (where wall height is 3m or less) or S = 3 + H-2/4	Ground Floor: 3.5m-4.5m Level 1: 3.5m-4.5m Level 2: 3.5m-6.0m Level 3: 3.6m-6.0m Rooftop: 7.9m	Unaltered Unaltered Unaltered Unaltered Unaltered	As Approved As Approved As Approved As Approved As Approved
Building envelope	NW: 4.2m	Outside envelope	Unaltered	As Approved
	SE: 4.2m	Outside envelope	Unaltered	As Approved
Landscaped area	50%	43.1% (601m2)	Unaltered	As Approved

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.5 Dwelling Density and Subdivision - Medium Density Residential	No	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	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
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	Yes	Yes
D9.7 Side and rear building line	No	Yes
D9.9 Building envelope	No	Yes
D9.10 Landscaped Area - General	No	Yes
D9.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B2.5 Dwelling Density and Subdivision - Medium Density Residential

This control requires the following:

Medium density housing must not be carried out unless the street frontage is greater than or equal to one third of the length of the longest side boundary.
The 19.81m street frontage of the subject site is equivalent to 28.1% of the 70.41m depth of the site. Therefore, the proposal is non-compliant with the above control.

The development application was made under the Low and Mid Rise Housing reforms pursuant to Chapter 6 of the Housing SEPP. The requirements of this control are contrary to Chapter 6 of the Housing SEPP which permits a greater height and FSR on this site. As such, the SEPP prevails over the DCP in this instance.

B6.3 Off-Street Vehicle Parking Requirements

No changes are proposed to the previously approved number of off-street parking spaces.

C1.4 Solar Access

The proposed modification does not alter the previously approved level of solar access received by adjoining properties.

D9.1 Character as viewed from a public place

Concern was raised regarding the proposed amendments to the level 3 front balcony and its appearance to the streetscape. Notably, the previously approved development sought to minimise the perceived scale of the development by recessing level 3 with a lightweight design. Additional information was requested to reduce the roof to the level 3 front balcony and minimise the side elements to reduce bulk. Amended plans were provided which removed the privacy screen from the north-western side, pulled the form back 0.5m from the street edge, reduced the width of the concrete column on the north-western side, and removed the steel column on the south-eastern side. Ultimately, the amendments provide a lighter design that remains recessed from the levels below while also tying in with the architectural intent. The amended plans have been reviewed and supported by Council's Urban Designer as the amendments result in a lighter more visually permeable upper level.

D9.7 Side and rear building line

No changes are proposed to the previously approved side and rear building lines.

D9.9 Building envelope

No changes are proposed to the previously approved building envelopes.

D9.10 Landscaped Area - General

No changes are proposed to the previously approved landscaped area.

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 Development Consent DA2025/0447 granted for demolition works and construction of a residential flat building containing eleven (11) units with basement car parking, swimming pool and associated site works has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation of more than 10% to Clause 4.5A Density controls for certain residential accommodation of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

Assessment issues included urban design matters pertaining to the street presentation of the level 3 balcony and its associated roof. Amended plans were provided pulling back the roof form and opening up the sides of the balcony to provide a lighter more recessive design similar to that of the approved scheme.

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 Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2026/0314 for Modification of Development Consent DA2025/0447 granted for demolition works and construction of a residential flat building containing eleven (11) units with basement car parking, swimming pool and associated site works on land at Lot 3 SP 57603,3 / 32 Golf Avenue, MONA VALE, Lot 1 SP 57603,1 / 32 Golf Avenue, MONA VALE, Lot 2 SP 57603,2 / 32 Golf Avenue, MONA VALE, Lot 4 SP 57603,4 / 32 Golf Avenue, MONA VALE, Lot 1 SP 57603,1 / 32 Golf Avenue, MONA VALE, Lot 3 SP 57603,3 / 32 Golf Avenue, MONA VALE, Lot CP SP 57603,32 Golf Avenue, MONA VALE, Lot 2 SP 57603,2 / 32 Golf Avenue, MONA VALE, Lot 4 SP 57603,4 / 32 Golf Avenue, MONA VALE, 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-647049 Mod2026/0314	The date of this notice of determination	Modification of Development Consent DA2025/0447 granted for Demolition works and construction of a residential flat building containing eleven (11) units with basement car parking, swimming pool and associated site works • Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation • Modify Condition No.81 - Access for Wheel In/Wheel Out Domestic Waste Servicing • Modify the Description of Development

Modified conditions

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA040	H	Proposed Site Plan	Walsh Architects	7 August 2026
DA100	H	Basement 2 Plan	Walsh Architects	7 August 2026

DA101	I	Basement 1 Plan	Walsh Architects	17 September 2026
DA102	I	Ground Floor Plan	Walsh Architects	17 September 2026
DA103	H	Level 1 Plan	Walsh Architects	7 August 2026
DA104	H	Level 2 Plan	Walsh Architects	7 August 2026
DA105	H	Level 3 Plan	Walsh Architects	7 August 2026
DA106	H	Roof Terrace Plan	Walsh Architects	7 August 2026
DA107	H	Upper Roof Plan	Walsh Architects	7 August 2026
DA201	H	Long Section A-A	Walsh Architects	7 August 2026
DA202	H	Long Section B-B	Walsh Architects	7 August 2026
DA203	H	Cross Sections	Walsh Architects	7 August 2026
DA204	H	Cross Sections	Walsh Architects	7 August 2026
DA205	H	Cross Sections	Walsh Architects	7 August 2026
DA300	H	Elevations	Walsh Architects	7 August 2026
DA301	H	Elevations	Walsh Architects	7 August 2026
DA302	H	Elevations	Walsh Architects	7 August 2026

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate	1792687M_06	Building Sustainability Assessments	13 August 2026

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

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

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

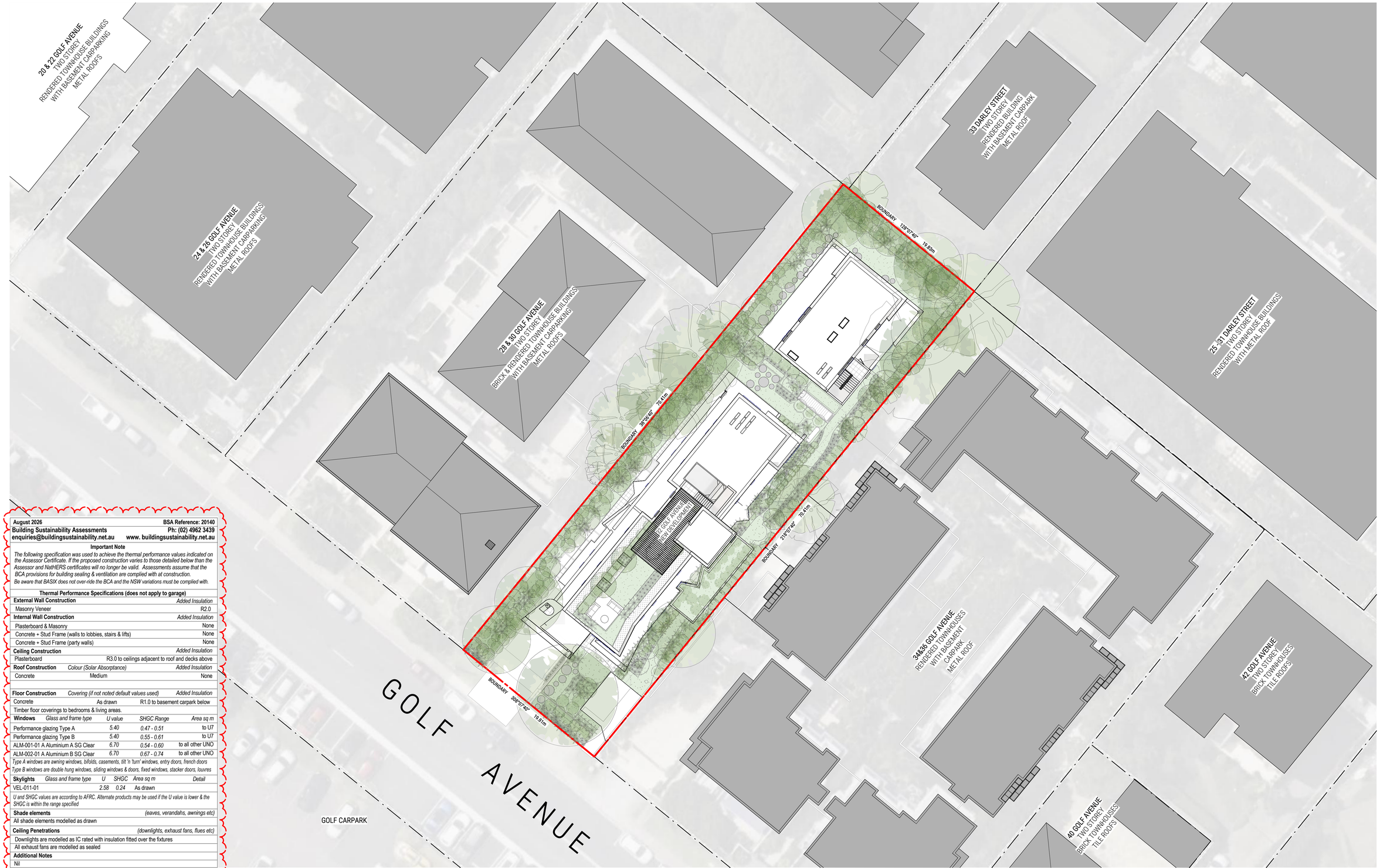
B. Modify Condition No.81 - Access for Wheel In/Wheel Out Domestic Waste Servicing to read as follows:

Access to the domestic waste storage room is to be via a door (1200mm wide, opening outwards) within 9.5m of the boundary. Access must be unimpeded by any security measures, locks or keypads on collection day between 6am to 6pm.

Reason: To ensure the domestic waste storage room is accessible.

C. Modify the Description of Development to read as follows:

Demolition works and construction of a residential flat building containing ten (10) units with basement car parking, swimming pool and associated site works



August 2026			BSA Reference: 20140
Building Sustainability Assessments			Ph: (02) 4962 3439
enquiries@buildingsustainability.net.au			**www. buildingsustainability.net.au**

Important Note

The following specification was used to achieve the thermal performance values indicated on the Assessor Certificate. If the proposed construction varies to those detailed below than the Assessor and NatHERS certificates will no longer be valid. Assessments assume that the BCA provisions for building sealing & ventilation are complied with at construction.
Be aware that BASIX does not over-ride the BCA and the NSW variations must be complied with.

Thermal Performance Specifications (does not apply to garage)

External Wall Construction		*Added Insulation*
Masonry Veneer		R2.0
Internal Wall Construction		*Added Insulation*
Plasterboard & Masonry		None
Concrete + Stud Frame (walls to lobbies, stairs & lifts)		None
Concrete + Stud Frame (party walls)		None
Ceiling Construction		*Added Insulation*
Plasterboard		R3.0 to ceilings adjacent to roof and decks above
Roof Construction	*Colour (Solar Absorptance)*	*Added Insulation*
Concrete	Medium	None

Floor Construction	*Covering (if not noted default values used)*		*Added Insulation*
Concrete	As drawn		R1.0 to basement carpark below
Timber floor coverings to bedrooms & living areas.			
Windows *Glass and frame type*	*U value*	*SHGC Range*	*Area sq m*
Performance glazing Type A	*5.40*	*0.47 - 0.51*	to U7
Performance glazing Type B	*5.40*	*0.55 - 0.61*	to U7
ALM-001-01 A Aluminium A SG Clear	*6.70*	*0.54 - 0.60*	to all other UNO
ALM-002-01 A Aluminium B SG Clear	*6.70*	*0.67 - 0.74*	to all other UNO

Type A windows are awning windows, bifolds, casements, tilt 'n 'turn' windows, entry doors, french doors
Type B windows are double hung windows, sliding windows & doors, fixed windows, stacker doors, louvres

Skylights *Glass and frame type*	*U*	*SHGC*	*Area sq m*	*Detail*
VEL-011-01	*2.58*	*0.24*	As drawn	

U and SHGC values are according to AFRC. Alternate products may be used if the U value is lower & the SHGC is within the range specified

Shade elements	*(eaves, verandahs, awnings etc)*
All shade elements modelled as drawn	
Ceiling Penetrations	*(downlights, exhaust fans, flues etc)*
Downlights are modelled as IC rated with insulation fitted over the fixtures	
All exhaust fans are modelled as sealed	
Additional Notes	
Nil	

WALSH ARCHITECTS

T4, 5 Geelong Street,
Fyshwick ACT 2609

E: scott@walsharchitects.com.au
P: 0466 049 880

Nominated Architect : Scott Walsh
ACT 2624

Certificate No. #HR-78P4Q8-02
Scan QR code or follow website link for rating details.
Assessor name: Krzysztof Kwiatkowski
Accreditation No.: DMN/04/2214
Property Address: 32 Golf Avenue , Mona Vale, NSW, 2103
http://www.hero-software.com.au/pdf/HR-78P4Q8-02

REV NO.	DESCRIPTION	REV DATE
E	PLANS WITHOUT PREJUDICE	15.01.26
F	PLANS WITHOUT PREJUDICE	04.03.26
G	4.56 APPLICATION	06.05.26
H	4.56 APPLICATION UPDATE	07.08.26

PROPOSED SITE PLAN

SHEET NUMBER	DA040
REVISION	H
SCALE @ A1	1 : 200

32 GOLF AVENUE MONA VALE



SCHEDULE OF FINISHES

FN:01 - CONCRETE LOOK FINISH
FN:02 - MASONRY BRICKS SIMILAR TO BLANCO LINEAR
FN:03 - METALWORK FINISHED IN BRONZE COLOURING
FN:04 - BIRCH PLYWOOD LOOK SOFFITS
FN:05 - GLASS TO MEET BASIX REQUIREMENTS

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G	4.56 APPLICATION	06.05.26
H	4.56 APPLICATION UPDATE	07.08.26

ELEVATIONS

SHEET NUMBER	DA300
REVISION	H
SCALE @ A1	1 : 100

32 GOLF AVENUE MONA VALE



SCHEDULE OF FINISHES

FN:01 - CONCRETE LOOK FINISH
FN:02 - MASONRY BRICKS SIMILAR TO BLANCO LINEAR
FN:03 - METALWORK FINISHED IN BRONZE COLOURING
FN:04 - BIRCH PLYWOOD LOOK SOFFITS
FN:05 - GLASS TO MEET BASIX REQUIREMENTS

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Nominated Architect : Scott Walsh
ACT 2624

Certificate No. #HR-78P4Q8-02
Scan QR code or follow website link for rating details.
Assessor name: Krzysztof Kwiatkowski
Accreditation No.: DMN/242274
Property Address: 32 Golf Avenue , Mona Vale NSW, 2103
http://www.hero-software.com.au/pdf/HR-78P4Q8-02

REV NO.	DESCRIPTION	REV DATE
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G	4.56 APPLICATION	06.05.26
H	4.56 APPLICATION UPDATE	07.08.26

ELEVATIONS

SHEET NUMBER	DA301
REVISION	H
SCALE @ A1	1 : 100

32 GOLF AVENUE MONA VALE



2 SOUTH-WEST ELEVATION
DA302 1 : 100 @ A1



1 NORTH-EAST ELEVATION
DA302 1 : 100 @ A1

SCHEDULE OF FINISHES

FN:01 - CONCRETE LOOK FINISH
FN:02 - MASONRY BRICKS SIMILAR TO BLANCO LINEAR
FN:03 - METALWORK FINISHED IN BRONZE COLOURING
FN:04 - BIRCH PLYWOOD LOOK SOFFITS
FN:05 - GLASS TO MEET BASIX REQUIREMENTS

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REV NO.	DESCRIPTION	REV DATE
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F	PLANS WITHOUT PREJUDICE	04.03.26
G	4.56 APPLICATION	06.05.26
H	4.56 APPLICATION UPDATE	07.08.26

ELEVATIONS
SHEET NUMBER DA302
REVISION H
SCALE @ A1 1 : 100
32 GOLF AVENUE MONA VALE

ITEM 5.4 DA2026/0228 - 91 SEAFORTH CRESCENT SEAFORTH - DEMOLITION WORKS AND CONSTRUCTION OF A NEW DWELLING HOUSE INCLUDING A SWIMMING POOL AND BOAT SHED

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary a non-numerical development standard special height provision to clause 4.3A, Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and 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.

The Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2026/0228 for Demolition works and construction of a new dwelling house including a swimming pool and boat shed at Lot 2 DP 507142, 91 Seaforth Crescent SEAFORTH NSW 2092 subject to the conditions set out in the Assessment Report.

Reporting manager:	Executive Manager Development Assessment
Attachments:	1. Assessment Report [**5.4.1** - 77 pages] 2. Site Plans & Elevations [**5.4.2** - 3 pages] 3. Clause 4.6 [**5.4.3** - 12 pages] 4. Clause 4.6 [**5.4.4** - 14 pages] 5. Clause 4.6 [**5.4.5** - 15 pages]

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2026/0228

Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 2 DP 507142, 91 Seaforth Crescent SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a new dwelling house including a swimming pool and boat shed
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Applicant:	Corona Projects Pty Ltd

Application Lodged:	05/03/2026
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/06/2026 to 13/07/2026
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: & cl4.3A / HoB 93.1% 4.4 Floor space ratio: 3.2%
Recommendation:	Approval

Estimated Cost of Works:	$ 2,606,364.00

EXECUTIVE SUMMARY

The application is required to be referred to the *Northern Beaches Local Planning* due to the proposal seeking to vary a non-numerical development standard in the Manly LEP. The Manly LEP's special height provision to clause 4.3A seek to restrict development so that its height does not exceed the crown of the road. The development despite this proposes a variation with the height of the development being 0.485m above the crown of the road.

The proposal is also seeking a variation to clause 4.3 "height of buildings" development standard by more than 10%. The site is subject to an 8.5 m height limit with the building being up to 16.41m high.

This equates to a 7.92m / 93.1% variation to the 8.5m building height control.

Additionally, the proposal is seeking a variation to clause 4.4 "floor space ratio" development standard by less than 10%. The site is subject a 0.4:1 (300sqm) FSR with the proposal being 309.8sqm. This equates to a 9.8sqm or 3.2% variation to the 0.4:1 FSR control.

The variations to the numerical and non-numerical developments standards of the Manly LEP are supported by written Clause 4.6 variation requests, which provide sufficient environmental planning grounds which justify as to why the departure to the development standards can be supported. Principally this is due to the significant topography of the subject site which falls away abruptly from street level.

The application was notified in accordance with the Northern Beaches Community Participation Plan. Two (2) submissions were received. The issues identified have been addressed by amended plans and merit consideration detailed in the report. This includes recommended conditions relating to dilapidation risk, construction management and the like. During the assessment period the applicant amended the dwelling design to address design issues and better respond to the DCP and LEP built form controls for amenity matters (views, overshadowing, landscape screening, privacy, building bulk, setbacks and the like.

The proposal is recommended for approval, subject to recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application proposed the substantial part demolition of the existing dwelling house and construction of a new dwelling with a pool and boat shelter shed. Ancillary site works include drainage, landscaping and associated works.

The new dwelling house will be configured as:

- Roof with apex at RL47.785 and 'pergola' awning.
- Upper level - Kitchen living dining and lounge area, void, balcony, storage, lift and stair access
- Ground level - Entry, 2 car garage, stair and lift access, bedroom, bathrooms, void, balcony, courtyard and storage.
- Lower ground 1 - Bedrooms (2), bathrooms (2) laundry, rumpus, lift and stair access.
- Lower ground 2 - Pool, stair access, wet-bar, storage, bathroom.

- Ancillary site works for pathway access, landscaping, boat shed, drainage and incidental works.

(During the assessment period a number of changes were made to increase side setbacks, reduce bulk, delete a studio outbuilding and reconfigure parts of the overall design in consideration of solar access, privacy, views, amenity and height)

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and

the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3A Special height provisions
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
Manly Development Control Plan - 3.3.1 Landscaping Design
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
Manly Development Control Plan - 4.1.8 Development on Sloping Sites
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 2 DP 507142 , 91 Seaforth Crescent SEAFORTH NSW 2092

Detailed Site Description:	The site is located on the southern side of Seaforth Crescent, opposite the southern end of the road reserve junction with Richmond Road. The site is accessed by a common vehicle access for multiple properties (CVAMP) with the Seaforth Crescent carriageway being further up the escarpment. Broad views are gained of the waterway area south of the site. Houses on the northern side of the Seaforth Crescent are much higher up the slope due to the steep escarpment and road alignment. The site is irregular with a total area of 575.4 square metres (sqm) by survey, with a 14.175 metre (m) street frontage to Seaforth Crescent. The combined western side boundary measures 56.125 metres and the eastern side boundary measures 47.55 metres. The rear boundary measures 11.77 metres. The site falls by approximately 40m from the front boundary down to the MHWM. The site currently contains a part two and three storey brick dwelling with a tile roof. The rear of the site is a steep vegetated slope with a series of stairs leading down towards the water and jetty. The site is not identified as a Heritage Item, nor is it located within a Heritage Conservation Area (HCA). It is also not considered to be located within the close vicinity of any Item or HCA.  Image 1: Site indicated by red arrow and photo indicates steep and multi-storey large houses surrounding the site. Image 2 (below): Site and boundary layout / subdivision pattern along Seaforth Crescent.

Map:



SITE HISTORY

The existing house on the property was constructed across 2 lots held in common ownership as part of the original "The Bluff Estate" created by subdivision in 1908.

To rectify the building encroachment Lot 20 and 21 DP5488 was re-subdivided (boundary adjustment) into Lot 1 and 2 DP507142 in 1965.

The house will be near completely demolished except for some lower supporting walls, foundation elements and floor sections, therefore no further site history is relevant to the proposal.

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	See heading DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS below this table.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in this case to address setbacks, reduce overshadowing, articulate the building bulk and reduce non-compliances including retaining landscape buffers, allowing better view sharing and privacy. The applicant responded with amended plans, additional detail and an amended 4.6 submissions (for FSR, building height and 'crown of the road" variations). Further minor amendments were made as per the plans dated 28.7.2026 Revision G. Overall the changes included deleting the studio outbuilding, pool area changes, POS changes and re-designing each floors spatial arrangements. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
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 subject to conditions including matters for erosion controls, engineering geotechnical management, landscape work and construction management.
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.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

Draft Northern Beaches Local Environmental Plan (Draft LEP) - Currently on exhibition until 30 September 2026

Definition(s): Dwelling house

Land Use Zone: C4 Environmental Living

Permissible or Prohibited: Permissible with consent.

Additional Permitted used for particular land – Refer to Schedule 1: Not applicable

A detailed assessment against the proposed numerical provisions and development standards has not been undertaken as part of this report.

However, broad consideration has been given to the Draft LEP, and the proposal is consistent with its relevant aims and objectives.

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 29/06/2026 to 13/07/2026 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:
Just Property & Planning	PO Box 3146 PUTNEY NSW 2112

The following issues were raised in the submission/s. Issues also include matters of concern discussed / raised during site inspection.

1. Concern that the new dwelling will cause overshadowing and loss of solar access to No.89 Seaforth Crescent.

Comment:
This issue has been addressed by amended details to better respond to solar access requirements and provide additional information to demonstrate overshadowing in accordance with the objectives and requirements of *Clause 3.4.1 Sunlight access and Overshadowing* pursuant to Manly DCP, including clauses 3.4.1.1 and 3.4.1.2 of the DCP. Additional considerations are also made under Clause 4.1.4 *Setbacks*. In summary, the floor arrangements and wall heights have been stepped in and wall setbacks changed to ensure solar access along the side boundary as much as practicable, while also allowing for privacy screening and slope constraints and considerations for carparking and internal amenity. On properties where the characteristic of the land influences overshadowing across a side boundary (commonly the longer profile of the building toward an east-west alignment) the overshadowing cast will often be a boarder regime. In this case the steep south facing slope also limits solar access in the lower parts of the site as detailed in the revised diagrams if buildings require high wall arrangements to address steeply sloping house footprint. Solar access is addressed in detail under *Clause 3.4.1 Sunlight access and Overshadowing* within this report.

In summary, this issue does not warrant refusal of the application.

2. *Concern that the proposal will cause view loss and view sharing concerns for surrounding properties, including public views from street.*

Comment:
This issue has been addressed specific to No.89 Seaforth Crescent and following considerations from visiting the site and adjacent property to inspect the side views from the kitchen and living area within No.89 Seaforth Crescent. Views include view lines across the side boundaries and over the rear)waterway) boundary from diagonal view lines. A detailed assessment is provided in Section 3.4.3 of this report.

Public views have also been considered and it is noted that the proposal does not cause any unreasonable view impact in relation to the 'special height provision of the LEP based on the "crown of the road".

In summary this issue does not warrant refusal of the application.

3. Concern that the proposal will create acoustic and visual privacy impacts in proximity to No.89 Seaforth Crescent, including the proposed pool.

Comment
Generally privacy is addressed by minimising side window outlooks or side facing balconies, rooms and by building separation. This includes using screen planting, fencing and side window arrangements for each floor. The proposal has been revised to place smaller utility rooms (bathroom / storage / screens / solid walls) toward No.89 Seaforth Crescent to shield noise and maintain privacy to balconies / rooms. The principal outlook for each level is directed toward the water area, however the steep terrain allows for overlooking between properties due the 3-4 storey configuration needed to reach lower floors. This issue is addressed in detail under *Clause 3.4.2 Privacy and security* within this report.

Overall, the proposal is consistent with Clause 3.4.2 with the amended plans addressing this issue and pool placement and adjacent screening elements adjusted for privacy.

In summary, this issue does not warrant refusal of the application.

4. Concern that the dwelling is bulky and the height and FSR do not comply with the built form controls including building height, setbacks and wall heights.

Comment
The plans were amended to reduce building bulk and provide additional screen planting to landscape outlook. The studio has been deleted and FSR adjusted to provide a more responsive design to the site constraints and concerns with building height raised. The building height and non-compliance with the built form controls are addressed in detail with this report, including considerations pursuant to clause 4.6 of the MLEP 2013, clause 4.1.2 and 4.1.4 of the MDCP 2013. Overall the amended design is also consistent with the objectives and requirements of *4.1.8 Development on Sloping sites* pursuant to MDCP. The building provides a profile to the street for public views (above from the main carriageway) and wider side setbacks (eastern side) which allows for landscape buffer, natural light, spatial separation for walls and responds to the pattern of adjacent houses for view sharing, overshadowing and privacy. Overall the visual impact is consistent with the pattern of surrounding development and non-compliant elements, following amendment made to address height / bulk and visual impact, provide an acceptable outcome, subject to conditions.

In summary, this issue does not warrant refusal of the application.

5. Concern that the proposal will create dilapidation risk to adjacent property assets from excavation, demolition and construction works.

Comment
This issue is addressed by conditions and the applicant has provided a geotechnical report to outline geotechnical engineering requirements to be employed during site works to manage dilapidation risk. In summary, this issue does not warrant refusal of the application and is addressed by conditions and routine engineering design and safety requirements at construction certificate stage or prior to works commencing.

This issue has been addressed and does not warrant refusal of the application.

6. General n*on-compliance with the Manly LEP and DCP*

Comment
The Manly LEP and DCP controls are intended to be flexible controls and not rigid, so that development can be considered on it merits and on balance with the design response addressing site constraints and other relevant considerations. The LEP and Manly DCP requirements have been considered in accompaniment to the proposed development and public submissions received. Relevant matters have been addressed where a detailed merit assessment is warranted, including provisions and objectives of relevant SEPPs and variation's sought to the built form controls. Internal and external referrals have addressed matters of relevance to those issues such as heritage, engineering, traffic / vehicle parking, landscaping works, biodiversity and ancillary works.

Relevant conditions are applied from Council's referral sections. This issue has been addressed and does not warrant refusal of the application.

7. Concern that studio building affects adjacent amenity

Comment
The studio building has been deleted from proposal. A small boat shed is to be located near the foreshore (see Referral comments from Council's Coasts and Catchments team).

This issue has been addressed and does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**Supported, with conditions.** The development application as described and illustrated in the reports and plans is assessed by Landscape Referral against the zone C3 Environmental Management objectives of Manly Local Environment Plan (MLEP), and the following Manly DCP 2013 (MDCP) controls (but not limited to): 3.3.1 Landscaping Design; 3.3.2 Preservation of Trees or Bushland Vegetation; 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable. An Arboricultural Impact Assessment (AIA) and a Landscape Plan accompany the application and are assessed as part of the Landscape Referral. The landscape setting outcomes of the zone *C3 Environmental Management* objectives include protection and management of the ecological and aesthetic landscape values, protection of tree canopies to maintain the natural scenic qualities of the foreshore, revegetate and rehabilitate the foreshore, and ensure that the bulk and scale of development integrate with the natural environment. Amended plans are noted. <u>Arboricultural Impact Assessment</u> (AIA): The AIA report assessing existing trees in proximity to development works including the Port Jackson Fig of high environmental amenity that is located as part of the natural rock outcrop to the mod-slope and this is recommended for retention including tree protection measures identified in the AIA report such as pier footing locations to be determined by an Arborist for the pool terrace structure. As recommended in the AIA report, a Project Arborist shall be engaged. All trees and vegetation within adjoining properties shall be protected. <u>Landscape Plan</u>: The Landscape Plan indicates retention of natural landscape features including the rock outcrops throughout the property and existing trees and vegetation, as well additional planting to enhance the landscape setting and satisfy the landscape objectives of MLEP and MDCP, and conditions shall be imposed.

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	**Supported, with conditions.** The comments in this referral relate to the following applicable controls and provisions: • Manly DCP – Clause 6.5 Terrestrial Biodiversity • SEPP (Resilience and Hazards) 2021 – Coastal Environment Area ADDITIONAL COMMENTS 30/06/2026: Amended Master Plans and Landscape Plans are noted. All existing trees within the subject site and neighbouring properties and the natural rock outcrops throughout the property are to be retained. Planting is proposed that includes species selected from the Manly Native Planting Guide. No objections in relation to biodiversity, subject to conditions. ORIGINAL COMMENTS 18/03/2026: The proposal does not require the removal of any protected trees. The Arboricultural Impact Assessment (Arbor Central Tree Care, November 2025) identified 1 tree where the works will enter the Nominal Root Zone (NRZ). The Arborist has identified these incursions as acceptable and that the tree will remain healthy. A tree protection plan has been developed and will be implemented. It is recommended that any new plantings are selected from the Manly Native Planting Guide on Council's website. The proposed development will take place within an existing developed area and minor landscaped gardens. No native vegetation or trees are proposed for removal. As such, impacts to flora and fauna and nearby biodiversity values is considered unlikely. No objections in relation to biodiversity, subject to conditions.

Internal Referral Body	Comments
NECC (Coast and Catchments)	**Supported, with conditions.** This proposed development is for demolition works and construction of a new dwelling house including a swimming pool and boat shed. <u>Officer comments:</u> This application was assessed in consideration of: • Supplied plans and reports; • *Coastal Management Act 2016;* • *State Environmental Planning Policy (Resilience & Hazards) 2021;* • *State Environmental Planning Policy (Biodiversity & Conservation) 2021;* • *Relevant sections of the Manly Local Environmental Plan (LEP) 2013 and Manly Development Control Plan (DCP) 2013;* • *North and Middle Harbour Estuarine Planning Level Study (July 2022).* The application is generally consistent with relevant planning controls. **Coastal Management Act 2016** The subject site is located 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 section 3 of the Coastal Management Act 2016. <u>Comment:</u> On internal assessment, the proposed development does generally comply with the objectives of the Coastal Management Act 2016 with respect to matters related to coastal processes and hazards. As such the application is generally consistent with the objects of the Coastal Management Act 2016. This referral has not assessed the compliance of the proposed development, for any potential impact on the scenic value of the area in accordance with the objectives of section 3(a) of the Coastal Management Act 2016 that relate to scenic impact. Assessment of compliance with section 3(a) of the Coastal Management Act 2016 will be by the development assessment officer assessing this development application. **State Environmental Planning Policy (Resilience & Hazards) 2021** The subject site has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 and the Foreshores and Waterways Area within the meaning of the State Environmental Planning Policy (Biodiversity & Conservation) 2021. Section 2.10 (coastal environment area) and section 2.11 (coastal use area) of the State Environmental Planning Policy (Resilience & Hazards) 2021 do not apply to the Foreshores and Waterways Area within the meaning of the State Environmental Planning Policy (Biodiversity & Conservation)

Internal Referral Body	Comments
	2021. Hence, according to section 2.10(3) and 2.11(2) of the State Environmental Planning Policy (Resilience & Hazards) 2021, only section 2.12 of the State Environmental Planning Policy (Resilience & Hazards) 2021 applies to the proposed development. Comment: On internal assessment, the DA satisfies the requirements under section 2.12 of the State Environmental Planning Policy (Resilience & Hazards) 2021. This referral has not assessed the compliance of the proposal, against any potential impact on the visual amenity or scenic qualities of the coast in accordance with section 2.11(1)(a)(ii) and section 2.11(1)(a)(iii) of the State Environmental Planning Policy (Resilience & Hazards) 2021. Assessment of compliance with these sections of the State Environmental Planning Policy (Resilience & Hazards) 2021 will be undertaken by the development assessment officer assessing this development application. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. State Environmental Planning Policy (Biodiversity & Conservation) 2021 Water Catchments – Sydney Harbour Catchment The subject site is located within the Sydney Harbour Catchment area identified on the State Environmental Planning Policy (Biodiversity & Conservation) 2021 Sydney Harbour Catchment Map. Therefore, Part 6.2 of the State Environmental Planning Policy (Biodiversity & Conservation) 2021 applies to the proposed development. Comment: On internal assessment, the DA satisfies the requirements of Part 6.2 of the State Environmental Planning Policy (Biodiversity & Conservation) 2021. **Foreshore and Waterways Area** The subject site is located within the State Environmental Planning Policy (Biodiversity & Conservation) 2021 Foreshores and Waterways Area Map. Hence Part 6.3 of the State Environmental Planning Policy (Biodiversity & Conservation) 2021 and the Sydney Harbour Foreshores and Waterways DCP 2005 apply in assessing this DA. Development consent, among others, must consider section 6.28 of the State Environmental Planning Policy (Biodiversity & Conservation) 2021. Boat sheds will only be permitted, as per section 5.12 of the Sydney Harbour Foreshores and Waterway DCP 2005. Note that this referral has not assessed the compliance of the proposal against any potential impact on the visual amenity or scenic qualities of the coast. This will be undertaken by the development assessment officer assessing this development application.

Internal Referral Body	Comments
	Comment: On internal assessment, the DA satisfies the Planning Principles and Matters for Consideration of the Foreshore and Waterways Area. The subject site is located within and adjacent to the Zone 6 (Scenic Waters – Active Use), Zone 8 (Scenic Waters – Passive Use) of the State Environmental Planning Policy (Biodiversity & Conservation) 2021. On internal assessment, it is determined that the objectives and assessment criteria of the zone have been met. **Manly LEP 2013 and Manly DCP 2013** Comment: No other coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant sections of the Manly LEP 2013 and Manly DCP 2013. **Manly Foreshores Area** The subject site is shown within the “Manly Foreshores Area” in Manly LEP 2013 mapping. Hence, section 6.10 –Limited development on foreshore area of the Manly LEP 2013 applies for any development within the foreshore area. This property has been identified as being affected by estuarine wave action and tidal inundation. In accordance with the North and Middle Harbour Estuarine Planning Level Study (July 2022), a base estuarine planning level (EPL) of RL (reduced level - AHD) 2.59m AHD would apply at the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.10m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m. Comment: The proposed development will be conditioned to satisfy the relevant estuarine risk management requirements of Manly LEP 2013. **Sydney Harbour Foreshore and Waterways DCP** The subject site is shown as located within the Sydney Harbour Foreshore and Waterways Area maps. The DA proposes works a boatshed above MHWM and used for private purposes. Therefore, 5 Design requirements (for proposed development located above the Mean High-Water Mark of the Sydney Harbour Foreshores and Waterways DCP applies. Comment: On internal assessment, the proposed development is subject to conditions to satisfy the relevant sections within Part 5 of the Sydney Harbour Foreshore and Waterways Development Control Plan 2005. The proposed development includes a boatshed related to section 5.12 Boatsheds (above the MHWM and used for private purposes). The

Internal Referral Body	Comments
	development will be conditioned to meet the requirements of section 5.12.
NECC (Development Engineering)	**Supported, with conditions.** 17/07/2026 **Development Engineering 2nd Referral Response.** No change to the previous comments. **Development Engineering 1st Referral Response.** The proposed development is in Zone 3 of Region 3. Vehicle crossing construction is not proposed. A geotechnical report has been provided. Development engineering raises no objections to the proposed development, subject to conditions.
Parks, reserves, beaches, foreshore	**Supported, without conditions.** The development site adjoins Middle Harbour waterway that is located downslope of the property. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the waterway. The development is not detrimental to the prevailing landscape character when viewed from the adjoining waterway, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td>Strategic and Place Planning (Heritage Officer)</td><td>Supported, without conditions.

<table>
<tr><td colspan="3">HERITAGE COMMENTS</td></tr>
<tr><td colspan="3">Discussion of reason for referral</td></tr>
<tr><td colspan="3">The proposal has been referred to Heritage as the subject site adjoins a heritage item
I1 Harbour Foreshores</td></tr>
<tr><td colspan="3">Details of heritage items affected</td></tr>
<tr><td colspan="3">Statement of Significance
Natural landscape type - Aesthetic.
Physical Description
Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.</td></tr>
<tr><td colspan="3">Other relevant heritage listings</td></tr>
<tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
<tr><td>Other</td><td>No</td><td></td></tr>
<tr><td colspan="3">Consideration of Application</td></tr>
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Internal Referral Body	Comments
	The proposal seeks consent for alterations to a dwelling and a new studio and boatshed. The dwelling is located at the top of the site closer to the road, the studio in the middle of the property and the boatshed at the rear bottom of the site. The heritage item is located at the rear of the site. The house and studio are considered to not impact upon the heritage item. The boatshed is a small and proposed to be located above an existing concrete platform, and no further works around the heritage item are proposed. As the boatshed is small and located in an area already disturbed by the concrete slab, it is considered to not impact upon the heritage item or its significance. Therefore Heritage raises no objections and requires no conditions. **Revised Heritage Comments - 3 July 2026** This application has been re-referred to Heritage as amended plans were received on 22 June 2026. Heritage has reviewed the amended plans and maintains its position that the house and studio are considered to not adversely impact upon the heritage item due to the sufficient physical distance from the heritage item. As the proposed boatshed maintains a similar size and built footprint as the previous plans, it is considered to not adversely impact upon the heritage item nor its significance. As such, Heritage raises no objections or concerns regarding this proposal and requires no conditions. Consider against the provisions of CL5.10 of MLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No
Traffic Engineer	**Supported with conditions** The application has been reviewed and as a single dwelling application only construction management conditions required. Two on site parking spaces provided. Access via a shared driveway off Seaforth Crescent. Only Demolition and Construction management conditions required as recommended.

External Referral Body	Comments
External - Ausgrid - Section 4.31 of SEPP (Planning Systems) 2021 Development near electricity infrastructure - s4.31 (of SEPP) 2021	**Supported, with conditions.** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

External Referral Body	Comments
Aboriginal Heritage Office	**Supported, with conditions** Development Application No: DA2026/0228 Description: Demolition works, alterations and additions to a dwelling house including a swimming pool, boat shed Address: 91 Seaforth Crescent SEAFORTH Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. If areas of *in situ* sandstone outcrop are in the proposed development area or revealed **during works** (i.e. platforms over 2m square), the *Aboriginal Heritage Office* would recommend a preliminary inspection by a qualified Aboriginal heritage professional prior to any further development (or if any sandstone outcrops that were present were properly excluded from future impacts). Then no further assessment is required and the *Aboriginal Heritage Office* would not foresee any further Aboriginal heritage constraints on the proposal. **Unexpected Finds / Stop Work Clause** It should be noted that under the National Parks and Wildlife Act 1974, all Aboriginal objects are protected, whether recorded or not. If any suspected Aboriginal objects, cultural materials, or human remains are uncovered during works: 1. All work must cease immediately in the vicinity of the find. 2. The area must be made safe and protected from further disturbance. 3. The Aboriginal Heritage Office must be contacted as soon as practicable for advice. 4. If the material is confirmed as Aboriginal, Heritage NSW and the relevant Aboriginal Land Council must be notified in accordance with section 89A of the Act, and works must not recommence until appropriate authorisation is provided. If human remains are uncovered during construction or earthworks: 1. All works must cease immediately in the vicinity of the find. 2. The area must be secured and protected from further disturbance. 3. NSW Police must be contacted immediately, in accordance with statutory requirements. 4. Works must not recommence unless authorised by NSW Police and relevant authorities.

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.A1851700, dated 17.6.2026).

Where relevant, the embodied emissions have been quantified in the above BASIX Certificate.

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

Service Authority Requirements

Referral is not required to *Transport for NSW* and no other infrastructure service authority issues are raised. Sydney Water manage their assets and development work by separate administrative processes directly with Sydney Water. The proposal was referred to Ausgrid who raised no objections within the 21 day statutory period.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

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

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

a) if the proposed development comprises the erection of a building or works—the building or works and

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

c) measures are in place to ensure that there are appropriate responses to, and management of, ar

Comment:
The works are contained within the central area of the site for excavation and building construction. The minor works and repairs to structures / walls / steps along the foreshore do not raise any adverse impact on the coastal environment with the boat shed being a small store over a lower section of the lower stairway for kayak / boards and the like.

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 envi cause an adverse impact on the following:
   a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) an
   b) coastal environmental values and natural coastal processes,
   c) the water quality of the marine estate (within the meaning of the Marine Estate Manager coastal lakes identified in Schedule 1,
   d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlan
   e) existing public open space and safe access to and along the foreshore, beach, headlan
   f) Aboriginal cultural heritage, practices and places,
   g) the use of the surf zone.

Comment:
The main structure of the building (carparking and house) do not raise any unreasonable impact on the coastal environment including vegetation and coastal landscape. Site works include landscaping to remove weed repair retaining wall and house / pool foundations including part replacement / repair of pathway and minor terraces. The DA works do not have any adverse impact on the landscape heritage zone (LEP Item I1) along the foreshore area. The small boat shed shelter has minimal impact in context of the scale of adjacent development at a similar level along the foreshore and the visual backdrop.

2) Development consent must not be granted to development on land to which this clause applies u
   a) the development is designed, sited and will be managed to avoid an adverse impact refe
   b) if that impact cannot be reasonably avoided—the development is designed, sited and wi
   c) if that impact cannot be minimised—the development will be managed to mitigate that in

Comment:
The dwelling design has been amended during the assessment period to better address setbacks and height provisions and is located at the upper end of the site with minimal disturbance to the lower landscape areas and minor ancillary / incidental works.

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
   a) has considered whether the proposed development is likely to cause an adverse impact
      i) existing, safe access to and along the foreshore, beach, headland or rock platfc
      ii) overshadowing, wind funnelling and the loss of views from public places to fore
      iii) the visual amenity and scenic qualities of the coast, including coastal headlands
      iv) Aboriginal cultural heritage, practices and places,
      v) cultural and built environment heritage, and
   b) is satisfied that:
      i) the development is designed, sited and will be managed to avoid an adverse im
      ii) if that impact cannot be reasonably avoided—the development is designed, site
      iii) if that impact cannot be minimised—the development will be managed to mitiga
   c) has taken into account the surrounding coastal and built environment, and the bulk, scal

Comment:
The building design floor plans scale and massing for the house including side walls setbacks, pool position and new dwelling partly situated over the existing foundations retains consistency with the general pattern of development in the surroundings along this section of Seaforth Crescent. Minor works lower down near the waterside foreshore for landscaping, path repairs, boatshed (single storey with sloping roof) and the like have minimal impact along the foreshore.

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 works do not raise any significant impact on coastal hazards, or landslip risk, subject to conditions (including erosion control).

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

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

Comment:
The works do not raise any unreasonable risk or significant impact on the coastal management zone.

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. The safe handling of

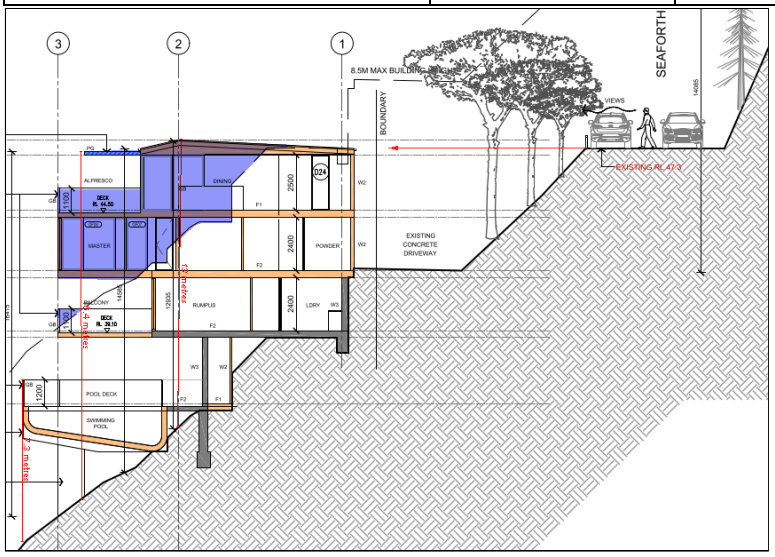
any asbestos, lead paint and other materials (where identified during works) is subject to standard OHS requirements, *Aust. Standards* and NSW law.

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	16.41m	93.1% (7.92m)	No
Special height provisions ('Crown of the road')	Limit RL47.3	RL47.785	0.485m	No
Floor Space Ratio	FSR:0.4:1 300sqm	FSR:0.41:1 309.8sqm	3.2% 9.8sqm	No


3
2
1
8.5M MAX BUILDING
BOUNDARY
SEAFORTH
VIEWS
EXISTING RL 47.3
ALFRESCO
DINING
DECK RL 44.50
MASTER
POWDER
EXISTING CONCRETE DRIVEWAY
RUMPUS
LDRY
BALCONY
DECK RL 39.10
POOL DECK
SWIMMING POOL
2500
2400
2400
1000
1000
1000

Clause	Compliance with Requirements
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.3A Special height provisions

The objective of this clause is to maintain public views to Sydney Harbour from street level on local roads above steeply sloping sites on certain land.

Despite clause 4.3 (2), the height of a building on a lot identified as "Special height provisions" on the Height of Buildings Map must not exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot.

The site is accessed by a CVAMP and therefore the "crown of the road" height provision extends from the street alignment higher up the escarpment where the road alignment exists and diverges along the slope. At the front the site along the CVAMP will appear as 2 storeys however at the public road carriageway along Seaforth Crescent the views are over the top of the roof area (see clause 4.6 detailed assessment below).

4.6 Exceptions to development standards

1. HEIGHT OF BUILDINGS
The application seeks consent to vary a development standard as follows:

Development standard: **Clause 4.3 Height of Buildings**
Requirement: **8.5m**
Proposed: **16.41m**
Percentage of variation: **93.1%**

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

Subclause (1) of this clause provides that:

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular

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

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

Subclause (2) of this clause provides that:

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

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

Subclause (3) of this clause provides that:

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

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

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

- The building height and roof form of the proposal are considered to be compatible with both the existing and desired future streetscape character.
- The bulk and scale of the proposal, a stepped two and three storey dwelling, is directly in line with the prevailing character of development along with low side of Seaforth Crescent.
- The proposal will not unreasonably impact private views from adjoining properties. This outcome is achieved through the provision of a large rear setback, combined with the fact that each neighbouring dwelling currently enjoys expansive, unimpeded panoramic views to the rear. The proposed built form is located substantially behind the primary viewing corridors of these properties and is not interrupting significant water views southward of the harbour.
- The height and design allows for solar access to adjacent land.
- The proposal, located on a site within the C3 Environmental Management zone, does not require the removal of any significant vegetation or canopy trees.
- The height and bulk of the proposed dwelling are a direct response to the site's steep topography, which necessitates a stepped built form to appropriately respond to the land's natural contours.

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

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

grounds to justify contravening the development standard:

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

The Clause 4.6 Request argues, in part:

- *There are significant constraints on the site due to its slope and characteristics such as aspect, width, relationship with adjacent properties.*
- *The height control is commonly varied along this section of Seaforth Crescent due to the immediate ground slope beside road level and desireable views and need for close access to the road.*
- *The proposal will utilise parts of the existing building footprint, walls and foundations and therefore this influences the part 3 part 4 storey vertical configuration.*
- *The south facing slope makes gaining natural light into the lower floors difficult and necessary to include a light-well that is essential for internal amenity.*
- *The proposal has sought to amend the design to arrange rooms and wall setbacks to assist privacy, accommodate solar access in the afternoon and not unreasonably impact views across the side boundary.*

It is agreed that:

- Design changes were made during the assessment process to effectively reduce non-compliant element including associated impacts on amenity.
- The upper front section of the dwelling and part of the pool balustrade exceed the height line due to the very steep slope and existing partly excavated spaces at ground level.
- The height variation has been adequately addressed and is consistent with the pattern of surrounding development given the physical constraints of the site and development permitted by MLEP.

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

- There are sufficient environmental planning grounds and the request to vary the development standard is warranted and well founded.
- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and maintain or improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

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

Conclusion:
Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013 and that a variation is appropriate under the circumstances.

It is considered on balance, that having regard to the particular circumstances, the non-compliance with clause 4.4 *Height of Buildings* standard, and the proposed departure from the development standard is

acceptable and it is reasonable that flexibility to the standard be applied.

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2. SPECIAL HEIGHT PROVISION

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

Development standard: **Clause 4.3A Special Height Provision "Crown of the road"**
Requirement: **Height at the mid point the road boundary RL47.3**
Proposed: **RL 47.785**
Variation: **0.485m**

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 4.3A 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 4.3A is unreasonable or

unnecessary in the circumstances of this application for the following reasons:

- The proposal seeks to replace the existing hipped roof with the outline profile shown on drawing C02 (14 of 20) dated 28.7.2026 drawn by *Boss Design.*
- The low profile roof and storey to be added create a minor non-compliance at the apex of the low profile roof.
- Relocating the upper storey elements (kitchen / dining / lounge area will create a large outward projection of the equivalent floor space with severe impacts on spatial bulk / amenity with No.89 Seaforth Crescent.
- The applicant has sought to minimise overshadowing and demonstrated 2 hours of solar access to the side elevation noting that the western elevation of No.89 Seaforth Crescent is in self shadow in the morning period on 21 June.
- The additions and variation to the 'crown of the road' has been addressed to minimise privacy impacts and public view impacts.

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

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

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

The Clause 4.6 Request argues, in part:

- *The proposed dwelling features a maximum height of RL47.785. The highest point of Seaforth Crescent adjoining the centre point of the subject lot boundary is RL47.3. This additional 485 millimetres (mm) of building height above the level*
  of Seaforth Crescent is not anticipated to have more than a negligible impact on existing public views of Sydney harbour over the subject site. This is attributed to the aforementioned dense foliage obscuring the existing
  views. Accordingly, the existing obscured public views of the waterway through the foliage are to be maintained.
- *the proposed height variation will remain largely imperceptible from the public domain when compared to a compliance scheme and does not meaningfully alter the existing filtered outlook from Seaforth Crescent toward the water.*
- *Numerous approved and constructed dwellings in the immediate vicinity (including Nos. 87, 89, 93 and 95 Seaforth Crescent) exhibit similar maximum building heights.*
- *While the rear awning extends across only just over half the depth of the balcony. The portion of the roof that exceeds the control is limited to a width of 11.4 m within the 17 m site width at the front building line, leaving view corridors to either side.*

It is agreed that:

- Design changes were made during the assessment process to effectively reduce non-compliant elements, including associated impact on amenity (such as bulk, height, setback

encroachments)
- There are numerous examples of dwellings or garage / carports in the vicinity the vary the 'crown of the road' and block views of the harbour whereas in this case apex of the roof, gutter / low profile roof pitch and leading edge of the balcony pergola create minimal interference.
- The dense vegetation along the road verge screens much of the public view southwards across the site.
- The slope of the road means the roof height is below the western end of the road alignment as the variation is 485 millimetres at the central / midpoint where it is measured at the "crown of the road".

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3A - special height provision for the following reasons:

- There are sufficient environmental planning grounds and the request to vary clause 4.3A 'crown of the road' development standard is warranted and well founded.
- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

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

Conclusion:
Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013 and that a variation is appropriate under the circumstances.

It is considered on balance, that having regard to the particular circumstances, the non-compliance with clause 4.3A *Special Height Provision*, and the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

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3. FLOOR SPACE RATIO
The application seeks consent to vary a development standard as follows:

Development standard: **Clause 4.4 (FSR)**
Requirement: **0.4:1**
Proposed: **0.41:1**
Percentage of variation: **3.2%**

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

Subclause (1) of this clause provides that:

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

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

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

Subclause (2) of this clause provides that:

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

Comment:
Clause 4.4 is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

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

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

Comment:
Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.4 is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- The existing house is single storey at the road frontage and it is desirable to provide off-street parking at-grade with the living area and main bedroom spaces presenting as a two storey dwelling to the street whereby the CVAMP affords opportunity to minimise any public view impact from the much higher position of the public road alignment above.
- The floor space is also influenced by the "infill" of the lower floor areas below the front entry level and offsetting this from the alternative of expanding further outward (into the airspace) across the middle of the property which will have a more severe impact on the existing landscape area below as well as creating a sense of enclosure along the side setback with the lower floor space of No.89 Seaforth Crescent.
- The vertical floor arrangement is a more efficient use of the land and existing floor / footings to be retained.

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

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not

defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

The Clause 4.6 Request argues, in part:

- *Numerous existing dwellings in the immediate vicinity of the subject site exhibit large multi storey building footprints greater than that of the proposed dwelling.*
- *The established built-form character along the low side of Seaforth Crescent is predominantly characterised by four and five storey dwellings. The additional floor space is distributed across the stepped two- and three-storey form that follows the steep topography. Retaining suitable lower footing and wall sections provides structural and construction benefits, minimises excavation and site disturbance, and allows the new upper levels to be set back and articulated in a manner consistent with the prevailing built form along the low side of Seaforth Crescent. This approach does not increase bulk or scale beyond what is already characteristic of the locality and supports the orderly redevelopment of the site.*
- *Noting that the proposed 8.9m2 boat shed encompasses the majority of the non-compliant floor area and having regard to the prevailing built-form character along the low side of Seaforth Crescent, which is dominated by four and five storey dwellings, the additional 9.8m² of floor area would be largely imperceptible when viewed from the public domain and would not substantially differ from a compliant scheme of 300 m² GFA*

It is agreed that:

- Design changes were made during the assessment process to effectively reduce non-compliant element including associated impact on amenity,
- The FSR variation is minor and given the infill of the lower floor space and boat shed the FSR variation is influence or contributed to this vertical arrangement and additional minor outbuilding. The site would otherwise comply however the use of subfloor space and small boat sheds is not unreasonable given the steep coastal / foreshore location.

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

- There are sufficient environmental planning grounds and the request to vary the FSR development standard is warranted and well founded.
- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and maintain or improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

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

Conclusion:
Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013 and that a variation is appropriate under the circumstances.

It is considered on balance, that having regard to the particular circumstances, the non-compliance with clause 4.4 *Floor Space Ratio* and the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

6.10 Limited development on foreshore area

The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.

[2] Development consent must not be granted to development on land in the foreshore area except for the following purposes:

(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,
(b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,
(c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

Comment:
The proposed boat shed has been amended to comply with the side setback and is a storage shed intended for boards / kayak / boating equipment and is positioned in the narrow access handle over the stairway leading to the existing jetty and seawall. No other significant works are proposed. The proposal is consistent with 2(c) of this clause and does not affect the significance of the amenity of the area being a relatively small change in the context of adjacent houses, pools and ancillary works in visual proximity of the site in this location.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 375.7sqm	**Requirement**	**Proposed**	**% or m Variation***	**Complies**
4.1.2.1 Wall Height	East: 8 m (metres) (gradients > 1:4+)	Kitchen / Living - 13.2m Garage / Entry Level - 13.1m Bedroom Level - 9.4m Pool level - 7.4 3m - Boat shed	5.2m / 65% 5.1 / 63% 1.4m / 17% - -	No No No Yes Yes
	West: 8 m (gradients > 1:4+)	Kitchen / Living - 11.1m Garage / Entry Level - 8.4m Bedroom Level - 9.8m Pool level - 8.9m 3m - Boat shed	3.1m / 38% 0.4m / 5% 1.8m / 22% 0.9m / 11% -	No No No No Yes

4.1.2.2 Number of Storeys	2	4 (Existing house is 3 storey, and part level levels retained) 1 Boat shed	2 storey / 100% - -	No Yes Yes
4.1.2.3 Roof Height	Height: 2.5m	0.6m	N/A	Yes
	Parapet Height: 0.6m	0.2m (gutter)	N/A	Yes
	Pitch: maximum 35 degrees	<5 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	1.0m to 4.5m Kitchen Living 1.0m to 4.5m Garage / Entry level 1.1m to 4.3m Lower Ground floor 6.6m to 8.5m Pool level	5m - 1.5m 5m - 1.5m 4.9m - 1.7m -	No No No Yes

4.1.4.2 Side Setbacks	**East** 1.0m to 4.0m (based on wall height 1:3)	Kitchen / Living - 4.3m Garage / Entry Level - 2.0m Bedroom Level - 2.0m Pool level - 2.0m 3m - Boat shed	0.3m 0.8m 1.2m N/A - 	No No Yes Yes Yes
	West: 1.0m to 3.6m (based on wall height 1:3)	Kitchen / Living - 13.2m Garage Entry Level - 13.1m Bedroom Level - 9.4m Pool level - 7.4m 3m - Boat shed	 N/A N/A 	No No Yes Yes Yes Yes
	Windows: 3m	Kitchen / Living - 4m Garage Entry Level - 2m Bedroom Level - 2m Pool level - 7.4m	Lounge / screen Foyer west Bath Bath 0.7m	Yes No No No
4.1.4.4 Rear Setbacks	Foreshore / waterfront lot	Lower level of house 35.4m Boat shed 0.9m	N/A -	Yes Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Total Open Space 60% of site area (345.2sqm)	94% 545sqm	N/A	Yes
	Open space above ground 25% of total open space (86.3 max sqm)	25% (137sqm)	N/A	Yes
4.1.5.2 Landscaped Area (Site area 575.4sqm)	Landscaped deep soil area 40% of total open space (138 min sqm)	95% (340sqm)	N/A	Yes
	3 native trees	3 trees (See landscape plan schedule)	N/A	Yes

4.1.5.3 Private Open Space	18sqm per dwelling	136sqm (across 4 balcony / terraces) Lower garden area 333.8sqm	N/A	Yes
4.1.9 Pools	1m coping / 1.5m water max 30% of TOS	Side : 2.5m coping / 2.8m water (West) 7.0m coping / 7.3m water (East) Rear : 8.5m coping / 8.8m water Pool is within house footprint. Pool is integrated to house / terrace floor level Coping is 0.0m to 6.0m out of ground Balustrade: up to 7.1m above ground	N/A N/A	Yes Yes No No
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5m or <50%	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.7 Stormwater Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Merit Consderation

The inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character. Development should recognise predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area.

Consideration of objectives listed under:
3.1.1.1 Complementary Design and Visual Improvement
3.1.1.3 Roofs and Dormer Windows
3.1.1.4 Garages, Carports and Hardstand Areas

(Bins and front fencing clause/s are not relevant as this is a single dwelling on the street (CVAMP) edge using the current setback due to steep topography)

Comment:

The proposal will include a new garage that is on the same setback as the existing house, with car access via the CVAMP. Therefore, due the Seaforth Crescent carriageway being higher up the escarpment, the garage does not dominate the street frontage and is consistent with the position of adjacent buildings that are constructed close to their front boundaries also in response to the very steep

topography in this location. Off street garage parking will assist minimising existing narrow and difficult parking within the CVAMP area that also services 3 other adjacent houses.

Overall the building design is compatible with other large homes that are constructed in response to the steep site characteristics. Many houses are 3 to 5 levels and in this case the proposal presents as 2 storeys to the street with a low pitched / low profile roof. The setback close to the boundary utilises the existing house foundations and wall alignments. While the new upper storey will create overshadowing and change the current building bulk, spatial separation and balcony arrangements have been amended to respond to issues raised in submissions and general amenity considerations under the Manly DCP.

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

3.3.1 Landscaping Design

Merit Consideration
The objectives and requirements of this clause are considered as follows:

Objectives

- *To encourage appropriate tree planting and maintenance of existing vegetation.*
- *To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.*

Comment
The proposal has been amended to increase the ground level setback to the east and enable a landscape buffer with taller (appropriate) planting and planting in the lower areas to assist in maintaining a landscape setting for the foreshore scenic protection area. The large fig tree that dominates the mid corner of the site will be retained and due its position on a rock outcrop Council's Landscape Officer is satisfied the fig will not be adversely impacted.

The applicant has supplied an arborist report to assess the tree and appropriate conditions are recommended. Overall the house cannot provide a landscaped front setback due to the existing footprint being close to the CVAMP boundary and elevated position of the house. The site contains a network of retaining walls, garden / lawn terraces and steps leading to the foreshore and minor works will refurbish the majority of these landscape elements in situ with some supplementary planting, as indicated in the diagram below. Planting in / near undercroft areas is appropriate to the lower level works associated with the new pool superstructure.

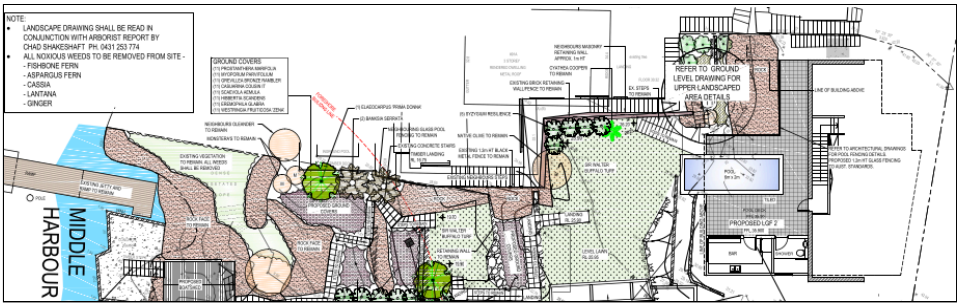


Image 4: The dominant landscape elements between the existing house footprint and the foreshore will

be retained.

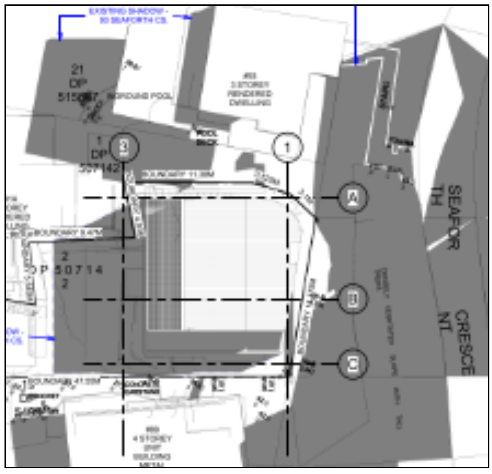
Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of Manly DCP and the objectives specified in s1.3 of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported,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

3.4.1 Sunlight Access and Overshadowing

Merit assessment
The objectives and requirements of this clause are considered as follows:

- *To provide equitable access to light and sunshine*.

Comment:
Concern was raised during the preliminary assessment period with regard to increased overshadowing toward No.89 Seaforth Crescent. Site inspection of the site and No.89 Seaforth Crescent identified the need for an amended design which the applicant provided. The amended proposal has been provided with more detailed solar access diagrams to demonstrate the overshadowing regime change for the site and adjacent land. The amended design has provided a 4m side setback for the upper level and 2m setback to the lower storeys to allow adequate spatial separation and solar access.



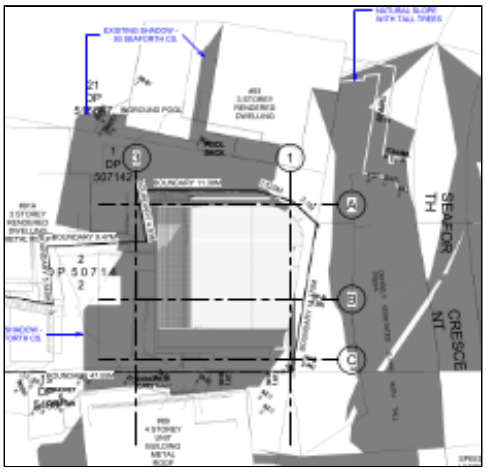


Image 5: Overshadowing midday 21 June. Image:6 Overshadowing 2pm 21 June

- *To allow adequate sunlight to penetrate:*
  - private open spaces within the development site; and
  - private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.

Comment
The adjacent side setbacks (including spatial separation) between No.89 Seaforth Crescent and No.91 are at a disadvantage for solar access for ground level yards directly behind, due to the steep south facing slope and vertically stacked storey levels needed for the steep gradient, which limits solar access to the rear yards. No.89 Seaforth Crescent has kitchen windows, a side balcony and side window off the living area that face west These receive direct light in the mid-afternoon and even with fairly wide setbacks the shadowing area, overshadowing is exacerbated by the south facing slope and very high walls on steep sections of the land.

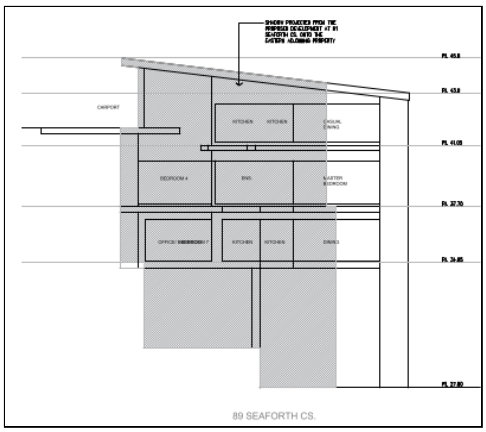


Image 7: Elevation view of the 3pm shadow on western side wall for No.89 Seaforth Crescent. (Between 9am and midday on 21 June, No.89 Seaforth Crescent is in self shadow on the western side and between midday and 2pm direct sunlight increases however by 3pm the proposed dwelling then casts a shadow as shown toward the western elevation of No.89 Seaforth Crescent.

- *To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:*
  - encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and
  - maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.

Comment
Overall the works proposed to the building have been amended to increase the side setbacks to allow solar access and natural light. During the winter and spring / autumn solstice overshadowing is shown in the shadow diagrams S01 to S15 dated 15.6.2026 demonstrates the existing shadow regime and impact from the proposed development on No.89 Seaforth Crescent. Despite the adjacent properties having north facing frontages, solar access is limited by the steep topography, including having POS areas at ground level much lower toward the foreshore and those south facing areas being in shadow most of the day. Additionally, ground level POS areas may be substantially overshadowed by adjacent dwellings. Under the circumstances of the site constraints, desirable views and privacy considerations the proposal are acceptable on merit pursuant, to the MDCP.

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

3.4.2 Privacy and Security

The objectives and requirements of this clause are considered as follows:

Merit assessment
Privacy considerations principally relate to No.89 Seaforth Crescent and No.93 and 91A Seaforth Crescent.

- *To minimise loss of privacy to adjacent and nearby development by:*
  i) appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;
  ii) mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.

Comment:
The proposed house is to be constructed across the upper slopes of the site with most windows and balconies looking directly toward the foreshore. There are some minor windows within the 3.0m setback but these are not placed or located such that the create critical privacy with adjacent dwellings that are inconsistent with the surrounding pattern of residential development. The proposed house utilises wide setbacks to the east and screens, room placement (such as bathrooms) to assist with privacy for each level, including the pool area. On the eastern side the wall to wall separation has been amended to step back from 2m to 4m in order to allow screen planting, solar access and a wider spatial separation for the upper storey. Along the western side the existing access handle and side walls of adjacent dwellings assist to maintain reasonable privacy.

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

Comment:
The proposed dwelling has been designed to provide screens at the side of the balconies as the building steps down the site with walls transitioning between floor levels. The proposal is consistent with this objective in balancing outlook and site constraints, including distribution of major dwelling components required for internal access, natural light, privacy, open space, living areas and bedrooms.

- *To encourage awareness of neighbourhood security.*

Comment:
The site maintains appropriate security by the single access point from the CVAMP and clear delineation of the front door area.

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

3.4.3 Maintenance of Views

The proposal is assessed pursuant to the objectives and requirements of this clause as follows:

Merit Assessment
The proposed dwelling will principally impact side / or cross viewing arcs from dwelling houses at No's.89 Seaforth Crescent as well as the public street view over the site from Seaforth Crescent.

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

Comment

The proposed dwelling is to be constructed over the existing building footprint that has a part 3, part 4 storey vertical configuration at the edge of the CVAMP with the position of the house having extensive harbour views toward the south. Surrounding properties also have extensive views, however only views from No.89 Seaforth Crescent have been raised in submissions received. The adjacent views impacted are from westerly facing windows at the upper living area from within No.89 Seaforth Crescent, including the western side balcony. Extensive views are also gained from south facing windows and balconies within No.89 Seaforth Crescent toward Beauty Point and Northbridge, however these views, in a southerly direction, are not affected. View concerns raised were discussed with the applicant and (including other changes) with the design having been amended to reduce non-compliant elements and lessen the impact on side views gained from No.89 Seaforth Crescent.

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

Comment
The views across the site from the public street domain will be impacted to a minor extent, however the low profile roof and increased setback of the upper level pergola off the living room will ensure public views will be substantially maintained. Site inspection show the public street view is filtered / partly blocked by dense tree canopy and remnant vegetation on the edge of the road embankment (as per 'Image 8'). Further to the west along Seaforth Crescent the position of carport and hardstand structures has removed the vegetation along the southern side of the road and the views are more 'open'.

View sharing has been considered generally from the street (public surroundings). Public views over the site are gained from Seaforth Crescent carriageway higher up the slope and these are considered in context with clause 4.3A within this report. In summary, the amended design has responded to retaining the public view outlook from the street and the assessment and amended design has accounted for the "crown in the road" special height provision and allowance made for steep sites. This includes changes to roof elements, including parapet, roof shape and pergola structures.



Image 8: Public view impact of new house as seen from the street level in front of the site.

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

Comment
The existing house on the site was constructed circa 1970's and has remained unchanged which has allowed views across the site from much larger more recent dwellings constructed adjacent that extend

closer toward the water. The view impact on public views has also been considered during the assessment with respect to *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor [2013].*

The views from surrounding properties include water views of Middle harbour and foreshore areas toward Beauty Point and Northbridge. From No.89 Seaforth Crescent westerly views are also partly interrupted by the height, size and position of houses west of the site, such as No.93 Seaforth Crescent. Westerly views include water views and skyline views toward Chatswood CBD. As stated, the main south facing views from the southern elevation of No.89 Seaforth Crescent are not affected.

The proposal has been considered with regard to the 4 step planning principle established by the NSW Land and Environment Court as per *Tenacity Consulting v Warringah Council*, including MLEP 2013 clause 4.3A(1) in terms of maintaining public views of Middle Harbour from street level.

NSW LEC Planning Principle - View consideration

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

Comment:
For No.89 Seaforth Crescent broad views are gained toward the south that include large parts of Middle Harbour (around Mosman), and water views around Grotto Point and Pearl Bay and toward Northbridge. Features of the primary view south include waterways, boat moorings, parkland, city skyline, and urban areas near Mosman / Northbridge. Views are also gained over the side boundary from the kitchen area (west) toward Chatswood CBD, however this view is partly obstructed by trees and other houses on the western side of No.91 Seaforth Crescent. A site inspection and details in submissions demonstrate that the broad and highly valued views are toward the south and westerly views are partly obstructed, however do allow for a westerly outlook.

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

Comment:
Views are gained across the south elevation and western windows / balconies, including the principal kitchen / living / dining areas which are located at the upper primary level of No.89 Seaforth Crescent. Lower levels (lower 3 floors) also have views to the south within No.89 Seaforth Crescent. Side views are impacted with the ability to retain westerly views being more difficult to retain, given the steep land and building alignment of the adjacent dwelling. Generally non-compliant elements of wall intrusions (including storey levels) were considered in detail and have required the applicant to amend the plans to better address objection issues raised, thereby assisting view sharing and lessen the view impact.

- *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued*

because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:
For No.89 Seaforth Crescent the southerly directly toward Pearl Bay / Beauty Point are unaffected. Views are from standing and sitting positions, including living areas and balcony (main south facing) and the side (minor) balcony. Side views (west) from the upper level, mid level and lower spaces are severely impacted across the side boundary, including sitting and standing views. The principal view arc SE to SW from the southern elevation is unaffected (negligible view loss) from within No.89 Seaforth Crescent.





Image 9: Westerly view across the side boundary from kitchen. Image 10: Southerly view (unaffected) from living area & rear balcony at No.89 Seaforth Crescent.

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

Comment
Potential view impacts were identified early in the assessment and following notification submissions received and site inspection confirmed the views severely affected are across the side boundary only. The applicant amended the plans and elevation's (to address both views and other overshadowing, privacy, landscape and DCP design issues). As such a more skilful design response was sought that minimised non-compliant elements, in particular improved spatial separation to the side wall of the new dwelling on the site and other reductions such balcony shape, area and deleting the studio outbuilding to achieve a less severe view loss impact to the westerly view.

It is concluded that the proposal has been suitably revised during the assessment process and overall the proposal is considered to meet this test of step 4 in that during final evaluation of this component of the planning principle the building has been refined and floor arrangement adjusted to achieve a more skillful design and the same development potential for the site, noting that the applicant also seeking to achieve competing outcomes for privacy, internal amenity, off-street parking, living areas and additional

bedrooms on very steep terrain.

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

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

The proposal is assessed pursuant to the objectives and requirements of this clause as follows:

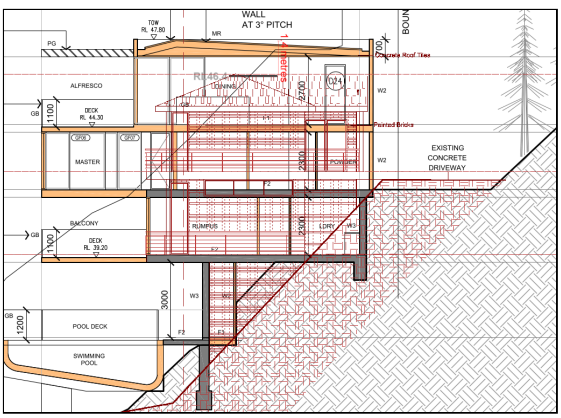
Merit Assessment:
The proposal breaches the wall height to setback controls along parts of both the eastern and western elevations where the maximum permitted wall height is 8.0m (sties stepper than 1:4). Merit assessment of the objectives and requirements of this this clause are considered as follows:

The objectives of the control are:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,
(b) to control the bulk and scale of buildings,
(c) to minimise disruption to the following—
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),
(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment

- The existing dwelling appears as single storey, with a hipped roof when viewed from the road frontage but is 3 levels at the rear due to the steepness of the site. The proposal will present as 2 storeys from the road as indicated in the diagrams below however this contributes to wall height non-compliance along the side elevations. The low profile roof and side wall articulation assist to address considerations of sunlight, privacy and building bulk for adjacent land.



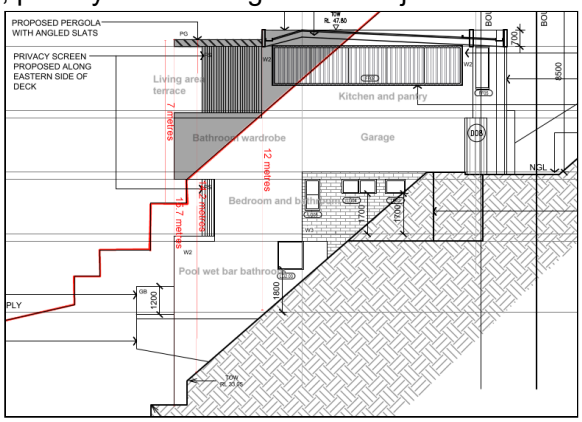


Image 11:Height comparison with existing house structure with cross section overlay. Image 12 External appearance to external ground height line and non-compliant elements above 8.5m height line in

comparison to EGL (including stepped terraces below the existing house).

The prevailing height of dwellings in the vicinity of the site shows that variations to height and wall height are a common occurrence on steep sites fronting the foreshore.

The wall height variation does not unreasonably impact views since the building is setback close to the road and other adjacent dwelling have a building footprint that extend even further toward the harbour foreshore. Views from the public domain are also not unreasonably impacted by the wall height due to the site being much lower than Seaforth Crescent carriageway and No.91 Seaforth Crescent being access by a CVAMP cutting. The "crown of the road" height provision is marginally breached but the broad view from above the site along the public roadway is partly obscured by remnant native vegetation along the road reserve.

The overall building bulk and scale along the side wall plane has been articulated and addressed by amendments to step the side wall in for the upper storey on the eastern side, including screens and room arrangements for privacy and landscaping to soften neighbours outlook within the side setback. The western side setback has a much wider separation to No.95 Seaforth Crescent due to the wide access handle that provides access to No.91A Seaforth Crescent (below the site and close to the foreshore.)

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

4.1.3 Floor Space Ratio (FSR)

The proposal is assessed pursuant to the objectives and requirements of this clause as follows:

Merit Assessment
Floor space ratio control seeks to maintain appropriate visual relationships between new development and the existing character and landscape of an area including:

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

Comment:
The proposal will utilise the existing building footprint and the extent of works reduced by way of deleting the previous "studio" outbuilding and adjusting the floor arrangement so that the FSR variation is now minor (<2%). Therefore, the majority of landscape area on the site is retained and will be subject to additional screen planting. The large fig tree will on the western side of the site is located on a rock outcrop and will be retained in situ.

Development along this section of Seaforth Crescent has primary water views toward the south (harbour area of Beauty Point and Northbridge). The steepness of the land has resulted in most dwellings being 3 to 5 levels for properties fronting the foreshore, which results in high side walls between adjacent dwellings and therefore side views are difficult to retain without disruption, if dwellings are aligned closely side by side. The proposal has been amended to increase side setback spacing but also address privacy and landscaping along the side outlook from No.89 Seaforth Crescent. Overall the view impact

relationship to FSR non-compliance and floor area distribution for the proposal is acceptable as addressed previously in this report.

Solar access and landscaping considerations have been addressed by the amended plans provided, including solar access diagrams, reduced building footprint, wider setbacks and arrangement of windows and balcony spaces to be consistent with the objectives of the DCP for these matters. The FSR exceptions for balcony and basement / storage / utility rooms are consistent with the DCP.

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

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

The proposal is assessed pursuant to the objectives and requirements of this clause as follows:

Merit Assessment

- *To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the stree*t.

Comment:
The front setback will remain the same since part of the existing dwelling and foundations are being retained and the existing dwelling is accessed from a CVAMP. The setback is consistent with No.85, No.87, No.89 and No.93 Seaforth Crescent.

The applicant amended the plans during the assessment period to better achieve consistency with the Manly DCP and better address spatial proportions to the eastern side including landscape details and stepping the wall plane in as height increases. Other considerations made included maintaining a low profile roof form and balcony to room arrangements (including the pool) to maintain privacy toward No.89 Seaforth Crescent that has a significant number of windows facing the site.

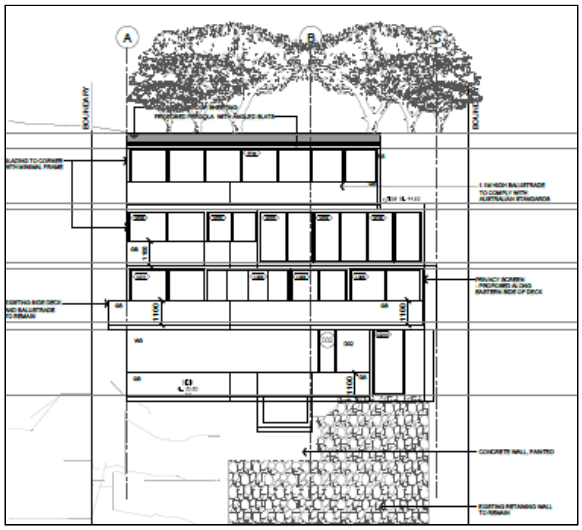


Image 13: Side setbacks and southern elevation view. Western setback is adjacent an access handle for No.91A Seaforth Crescent,with the eastern setback stepped across due the the close alignment with

No.89 Seaforth Crescent.

To ensure and enhance local amenity by:

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

Comment:
The proposed development allows for adequate visual and acoustic privacy to be retained between the subject site and neighbouring properties despite some windows not complying with the 3m setback requirement. At the ground / lower level the side windows are for utility rooms (wardrobes, bathroom and the like) and of appropriate size to minimise privacy impacts. The upper storey has been setback 4m from the side boundary to allow natural light, afternoon sunshine and air movement. Overall the side wall arrangement including screening for balconies and landscaped setbacks will not create unreasonable privacy impacts between adjacent properties.

- *To promote flexibility in the site of buildings.*

Comment:
The site is a narrow and steeply sloping toward the foreshore. The revised wall and room / balcony arrangements with privacy screens, assists to maximize privacy from overlooking, between No.89 Seaforth Crescent and toward living and bedroom terraces and the pool area terrace of the subject land.

- *To enhance and maintain natural features (bushland, deep soil, open space, urban bushland, natural areas (parks))*

Comment:
The proposal will provide new landscaping works, including shrub planting and retention of the majority of the landscape open space within the central lower area of the site. The previously proposed studio building in the central area of the site has been deleted with the revised plans.

- *To assist in appropriate bush fire asset protection zones.*

Comment:
The site is not within a bushfire asset protection 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 s1.3 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

The proposal is assessed pursuant to the objectives and requirements of this clause as follows:
Merit Assessment.

Objectives

- *To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*
- *To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*
- *To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*
- *To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*
- *To minimise the spread of weeds and the degradation of private and public open space.*
- *To maximise wildlife habitat and the potential for wildlife corridors.*

Comment:
The majority of landscaped area on the site will be retained due to being in the lower areas of the land and interspersed with garden / small terraces. The applicant has provided a concept landscape plan for new / additional native plants suitable for the coastal environment.

The existing house is built close to the front boundary and in an elevated position on very steep terrain. Therefore, limited space is suitable at the front of the house toward the streetscape with the CVAMP access. The road verge above the site contains dense native remnant vegetation that screens the house when viewed from Seaforth Crescent.

The lower parts of the site are landscaped due to difficult access below the house however the proposal will retain an existing large fig tree on the western side and include new screen planting suitable for the setback and terraced garden areas. The landscape planting proposed will assist to screen the lower floor areas and undercroft for neighbours amenity.

The proposal will retain the majority of deep soils areas that extend to the lower slope and near the foreshore to assist infiltration of water runoff.

The proposal will not create any unreasonable risk of weeds spreading to other public or private land and has acceptable garden areas for habitat, similar to the general pattern of development and landscaping along Seaforth Crescent.

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 s1.3 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)

The proposal is assessed pursuant to the objectives and requirements of this clause as follows:

Merit Assessment

Objectives:
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas
See also paragraph 3.1.1 Streetscape.

a) The design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.

b) Garage and carport structures forward of the building line must be designed and sited so as not to dominate the street frontage. In particular:

i) garages and carports adjacent to the front property boundary may not be permitted if there is a reasonably alternative onsite location;
ii) carports must be open on both sides and at the front; and

c) the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

Comment:
The garage enables parking to be on-site and not obstructing the CVAMP which improves the current arrangement that do not satisfy minimum parking requirements. The garage area takes up a large floor plate area and therefore this displaces living space to other floor positions. The garage width and building colours do not create any adverse impact on the streetscape.

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

4.1.8 Development on Sloping Sites

The proposal is assessed pursuant to the objectives and requirements of this clause as follows:

Merit Assessment:
Objectives

- *To ensure that Council and the community are aware of, and appropriately respond to all identified potential landslip & subsidence hazards.*
- *To provide a framework and procedure for identification, analysis, assessment, treatment and monitoring of landslip and subsidence risk and ensure that there is sufficient information to consider and determine DAs on land which may be subject to slope instability.*
- *To encourage development and construction this is compatible with the landslip hazard and to reduce the risk and costs of landslip and subsidence to existing areas.*

Comment:
The proposal has been amended to ensure the design of development response better to the slope of the site, to minimise loss of views and amenity from public and private spaces in consideration of the existing house and garage footprint and position being utilised. Plan change's made by the applicant during the assessment better utilised the large undercroft spaces which have been changed to integrate rooms and other elements. The applicant has provided an Engineering geotechnical report to assess and address potential risks. During and prior to the construction certificate, issues relating to constructability, use of site cranes if required, delivery, materials and the like will be managed by the Principal Certifier and applicant, and subject to NSW law and standard conditions.

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

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

4.1.9 Swimming Pools, Spas and Water Features

The proposal is assessed pursuant to the objectives and requirements of this clause as follows:

Merit Assessment:
The pool has a raised superstructure 6.0m high with the safety balustrade up to 7.1m in the lower level of the proposed house design

Objectives:

- *To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties.*
- *To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality.*
- *To integrate landscaping.*
- *To become an emergency water resource in bush fire prone areas.*

Comment:
The pool is in the lower central part of the building and privacy is retained by incorporating a wetbar and toilet rooms on the eastern side or restrict overlooking and shield noise. The steepness of the site influences the protrusion of the superstructure that creates and undercroft area.

Exposed undercroft elements are common for buildings along Seaforth Crescent, that are near the foreshore or are on very steep sites. However in this case, the pool is integrated to the lower floor level and is not significantly exposed to the waterway / scenic harbour area.

The site is also partly screened in the middle west corner, due a large fig tree and rock features that shield the undercroft space.

The site is not affected by bushfire APZ and the pool will not be visible from the street.

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

5.4.1 Foreshore Scenic Protection Area

Consideration of the objectives and requirements of this clause are considered as follows:

Merit Assessment:

The objectives of the control are:

- *LEP clause 6.9 designates land in the Foreshore Scenic Protection Area as shown on the LEP Foreshore Scenic Protection Area Map to protect visual aesthetic amenity and views both to and from Sydney Harbour, the Pacific Ocean and the Manly foreshore. Development in the Foreshore Scenic Protection Area must not detrimentally effect the 'visual or aesthetic amenity of land in the foreshore scenic area nor must the development similarly affect the views of that land, including ridgelines, tree lines and other natural features viewed from the Harbour or Ocean from any road, park or land in the LEP for any open space purpose or any other public place. Any adverse impacts considered in this paragraph will be mitigated. In accordance with these LEP objectives Council seeks to conserve and preserve tree canopies and street trees, wildlife corridors and habitat and minimise cumulative impacts on escarpment, rock shelves and other natural landscape features.*

5.4.1.1 Additional matters for consideration

- *LEP clause 6.9(3)(a) to (d) lists certain matters to be taken into account in relation to all development within the Foreshore Scenic Protection Area.*

a) Further to matters prescribed in the LEP, the development in the Foreshore Scenic Protection Area must also:
i) minimise the contrast between the built environment and the natural environment;
ii) maintain the visual dominance of the natural environment;
iii) maximise the retention of existing vegetation including tree canopies, street trees, wildlife corridors and habitat;
iv) not cause any change, visually, structurally or otherwise, to the existing natural rocky harbour foreshore areas;
v) locate rooflines below the tree canopy;
vi) consider any effect of the proposal when viewed from the harbour / ocean to ridgelines, tree lines and other natural features; and
vii) use building materials of a non-reflective quality and be of colours and textures that blend with the prevailing natural environment in the locality.

b) Setbacks in the Foreshore Scenic Protection Area should be maximised to enable open space to dominate buildings, especially when viewed to and from Sydney Harbour, the Ocean and the foreshores in Manly.

Comment:
The proposal involves substantial demolition of the existing house but will retain selected walls, footings and other elements for the new house. The general position of the house remains consistent with the current scenic impact when viewed in context with adjacent and surrounding houses in the foreshore area. Elevated subfloor areas and buildings that are one or two storeys when viewed from the road, commonly have a four or five storey appearance when viewed from the waterway area. Therefore, the proposal is consistent with the existing aesthetic values and amenity of the foreshore locality.

During the assessment period the proposal was amended to address setbacks, building bulk concerns and design considerations relating to landscaping and general amenity concerns. The amended design has addressed these considerations including minimal variation to the "crown of the road" height control. Colours and materials are suitable and will not be jarring on the landscape setting for the urban surroundings.



Image 14: View of the site (centre dwelling) from the water with No.89 Seaforth Crescent on RHS of photo and No.91A on LHS.

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 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 $26,064 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $2,606,364.

CONCLUSION

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

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

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

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

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

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

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

PLANNING CONCLUSION

This application has been referred to the NBLPP due to a variation sought to clause 4.5A being a non-numeric standard of Manly LEP 2013, that limits development to not exceed the "crown of the road" height control for sites facing the harbour. In this case, the variation is minor, being 0.485 millimetres, and associated with the apex of the new roof. The site is accessed by CVAMP along a steep section of the road with dense vegetation within the road reserve and therefore the visual and amenity impact on public views is minimal. The variation is supported in the circumstances of the case.

The proposal has received one objection with issues of views, setbacks, solar access and other LEP / DCP non-compliances having been addressed by amended plans and within the assessment report. Conditions are applied to address matters of concern including dilapidation risk, landscaping and construction management. The proposed variations to building height and FSR are also considered acceptable under the circumstances of the case.

Overall, the development work is of appropriate quality and design that is consistent with the objectives of the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment, subject to conditions. The proposal is therefore supported for approval, with conditions.

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

RECOMMENDATION

A. That Northern Beaches Council, as the consent authority, vary the development standard contained within *Clause 4.3 Height of Buildings* and *Clause 4.3A Special Height Provision* and *Clause 4.4 Floor Space Ratio*, pursuant to Clause 4.6 of the *Manly Local Environmental Plan 2013* because the Applicant's written requests have adequately addressed the merits required to be demonstrated.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2026/0228 for Demolition works and construction of a new dwelling house including a swimming pool and boat shed on land at Lot 2 DP 507142, 91 Seaforth Crescent, SEAFORTH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans (Stamped)			
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**
A02	D	Existing and Demolition LG Floor Plan	Boss Design Pty Ltd
A03	D	Existing and Demolition Ground Floor Plan	Boss Design Pty Ltd
B02	G	Proposed Boat Shed	Boss Design Pty Ltd
B03	G	Proposed LG 02 Floor Plan	Boss Design Pty Ltd
B04	G	Proposed Lower Ground Floor Plan	Boss Design Pty Ltd
B05	G	Proposed Ground Floor Plan	Boss Design Pty Ltd
B06	G	Proposed First Floor Plan	Boss Design Pty Ltd
B07	G	Proposed Roof Plan	Boss Design Pty Ltd
C01	G	Boat Shed Elevation and Section	Boss Design Pty Ltd
C02	G	Proposed Elevations	Boss Design Pty Ltd
D01	G	Section A	Boss Design Pty Ltd
W01	C	Window and Door Schedule	Boss Design Pty Ltd
-	-	External Finishes Schedule	Boss Design Pty Ltd

Landscape Plans			
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**
L01	B	Landscape Concept Plan*	Susan Read Landscapes
L02	B	Landscape Details, Images Notes and Schedule	Susan Read Landscapes
Engineering Plans			
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**
D1	A	Details, Notes and Legend	NY Civil Engineering
D2	A	Lower Ground Floor 2*	NY Civil Engineering
D3	A	Lower Ground Floor 2*	NY Civil Engineering
D4	A	Lower Ground Floor 1	NY Civil Engineering
D5	A	Stormwater management Ground Floor	NY Civil Engineering
D6	A	First Floor Plan	NY Civil Engineering
D8	A	Stormwater Details	NY Civil Engineering
D9	A	Stormwater Details	NY Civil Engineering
D10	A	Sediment Control Plan	NY Civil Engineering
D11	A	Sediment Control Plan	NY Civil Engineering

*Plans and Drawings are to be updated with the Construction Certificate to correspond with the approved stamped Architectural Plans.

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate	A1851700	Mr Chad Whittaker	17.6.2026
Geotechnical Investigation and Assessment	MMGEO2025DS_AC	MM Geomechanics	30.4.2025
Arboricultural Impact Assessment 1031	V1	Arbor Central Tree Care	10.11.2025
Waste Management Plan	-	Applicant	5.3.2026

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	11.3.2026

(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 directly to the Long Service Corporation. 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) If proposing to undertake works on Council property, a “Road Opening Permit” will need to be applied for from Council, and all applicable charges paid, prior to the commencement of any work. 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. Please contact Road Restorations Team at Council if unsure whether a Road Opening Permit is required.

(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.

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of $26,063.64 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $2,606,364.00.

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. **Footing design near trees to be retained**

a) Pier footing locations shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer near existing tree 1 (Port Jackson Fig), to locate critical tree roots and recommend footing design and locations for the construction works
b) the Arborist shall review, comment, recommend design revision as required and approve the footing layout, to ensure the locations of footings will be manageable in terms of tree protection measures
c) the Arborist shall submit certification to the Certifier, that the locations of the footings are accepted
d) the agreed footing structural layout plans shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

8. **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.

9. **On-Site Stormwater Disposal Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater disposal in accordance with Northern Beaches Council’s Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by NY Civil Engineering, job number E250537 dated 23.10.2025 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:
1. Minimum four (4) metre long level spreader.
2. Erosion control in accordance with Section 4.1.2.1.2 Region 3 Zone 3 and 4 of the Water Management for Development Policy.

Detailed drainage plans, including engineering certification, are to be submitted to the

Certifying Authority for approval prior to the issue of the Construction Certificate.

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

10. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Off Street Parking Design**

The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

12. **Construction Traffic Management Plan**
A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to Council via an application for a Permit to Implement Traffic Control. The application form can be accessed via https://www.northernbeaches.nsw.gov.au/council/forms. Approval of the permit application by the Northern Beaches Council Traffic Team is required prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:

- Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.
- Demonstrate that direct access from a public space/road is not viable for each stage of works.
- An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.
- Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
- No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
- How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
- If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.
- A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
- A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
    - Compare the post-construction report with the pre-construction report,
    - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
    - Should any damage have occurred, identify remediation actions taken.
    - Be submitted to Council with the Occupation Certificate.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.

- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- Proposed protection for Council and adjoining properties.
- The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, TfNSW’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

13. **On-Street Work Zone**

The applicant shall lodge an application for a work zone for the frontage of the site to Council for consideration and approval. The provision of a work zone may require consideration by the Northern Beaches Local Transport Forum. Application forms for work zones are available on Council’s website. Applications shall be lodged at least 4 weeks prior to work commencing.

Reason: To ensure works vehicles do not impact on parking, traffic flows and pedestrian

thoroughfares.

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

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

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

15. **Estuarine Planning Level Requirements**
An Estuarine Planning Level (EPL) of 2.59m AHD has been adopted by Council for the subject site and shall be applied to all development as follows:

1. All structural elements below 2.59m AHD shall be of flood compatible materials;
2. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.59m AHD or waterproofed to this level; and
3. The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.59m AHD.
4. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.59m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.59m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure vulnerable components of the development are built at the appropriate level.

16. **Boatshed design and construction requirements**
The proposed boatshed is to be designed and constructed in accordance with section 5.12 of the Sydney Harbour Foreshore and Waterways DCP.

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

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

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

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2025 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all excavation / footing works near the Port Jackson Fog (tree 1), and in particular the following requirements / works as nominated in the Arboricultural Impact Assessment:

a) sections 6.2.1, 6.2.2, 6.2.3, all of section 7 and all of section 8

b) Appendix 11 Tree Protection Plan

All tree protection measures specified must: be in place before work commences on the site; be maintained in good condition during the construction period; and remain in place for the duration of the construction works. The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2025 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

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

Reason: Tree protection.

20. **Demolition Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) 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.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.

- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of 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 DTMP 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. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – "Manual of Uniform Traffic Control Devices", TfNSW' 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 Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

21. **Pre-Construction Dilapidation Report**
Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties:

- 89 Seaforth Crescent Seaforth
- 91A Seaforth Crescent Seaforth
- Any other adjacent public or private property assets that the Certifier considers may be a risk of damage during works.

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

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

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

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

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

22. **Sediment and Erosion Controls**

For developments that include more than 2500sqm of disturbance:

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

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

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

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

The ESCP must include the following as a minimum:

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

location of any stormwater pits on the site and how they are going to be protected,
- North point and scale,
- Type of erosion control measures to divert and slow run-off around and within the site.

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

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

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

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

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

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

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

DURING BUILDING WORK

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

Reason: Preservation of significant environmental features.

24. **Tree and vegetation protection**
a) Existing trees and vegetation shall be retained and protected, including:

i) all prescribed trees within the site, including trees and vegetation nominated for retention on the approved reports and 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 AS4970-2025 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 of AS4970-2025 Protection of trees on development sites
ix) the activities listed in section 4 of AS4970-2025 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:
c) The arboricultural works listed in a) and b) are undertaken as complaint to AS4970-2025 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment and/or Project Arborist as applicable.

Reason: Tree and vegetation protection.

25. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

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

Reason: Public safety.

27. **Implementation of Demolition Traffic Management Plan**
All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP 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 DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

28. **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.

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

Reason: To ensure public safety.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

31. **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.

32. **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.

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

34. **Stockpiling materials**
During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

35. **Pollution Control**
Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the stormwater network and/or receiving waterways.

Reason: To ensure that building associated chemicals and pollutants don't enter the surrounding environment.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

36. **Landscape completion**

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

a) landscape works are to be contained within the legal property boundaries

b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan, unless otherwise imposed by conditions

c) all tree planting shall be a minimum pre-ordered planting size of 45-75 litres or as otherwise scheduled if greater in size; meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn

d) mass planting shall be in garden beds / planter beds prepared with a suitable free draining soil mix and minimum 75mm depth of mulch

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

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.

37. **Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

a) compliance to any Arborist recommendations for tree protection generally and during excavation works,

b) extent of damage sustained by vegetation as a result of the construction works,

c) any subsequent remedial works required to ensure the long-term retention of the vegetation.

Reason: Tree and vegetation protection.

38. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

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

39. **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.

40. **Waste Disposal Verification Statement**
On completion of demolition work:

- a signed statement must be submitted to the Certifier verifying that demolition work, and any recycling of materials, was undertaken in accordance with the waste management plan approved under this consent, and
- if the demolition work involved the removal of asbestos, an asbestos clearance certificate issued by a suitably qualified person, must be submitted to the Certifier within 14 days of completion of the demolition work.

Reason: To provide for the submission of a statement verifying that demolition waste management and recycling has been undertaken in accordance with the approved waste management plan.

41. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater disposal system works. A guide to the process can be found on Council's website using the following link:
https://files-preprod-d9.northernbeaches.nsw.gov.au/nbc-prod-files/media/files/2023-12/guide-for-submitting-legal-documents.pdf?1756256223

The form for the application can be found on Council's website using the following link:
https://applications.northernbeaches.nsw.gov.au/T1PRProd/WebApps/eProperty/P1/eSubmit/T
r=WC.WEBGUEST&f=%24P1.ESB.TERMS.VIW&ReturnUrl=%2fT1PRProd%2fWebApps%2fe

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal system within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater disposal system is to be submitted.
The on-site stormwater disposal system includes all stormwater drainage infrastructure on the site including, but not limited to: level spreader, erosion control devices, gutters and downpipes.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard and not altered

42. **Swimming Pool Requirements**
The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:
(i) Swimming Pools Act 1992;
(ii) Swimming Pools Amendment Act 2009;
(iii) Swimming Pools Regulation 2018
(iv) Australian Standard AS1926 Swimming Pool Safety
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

43. **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

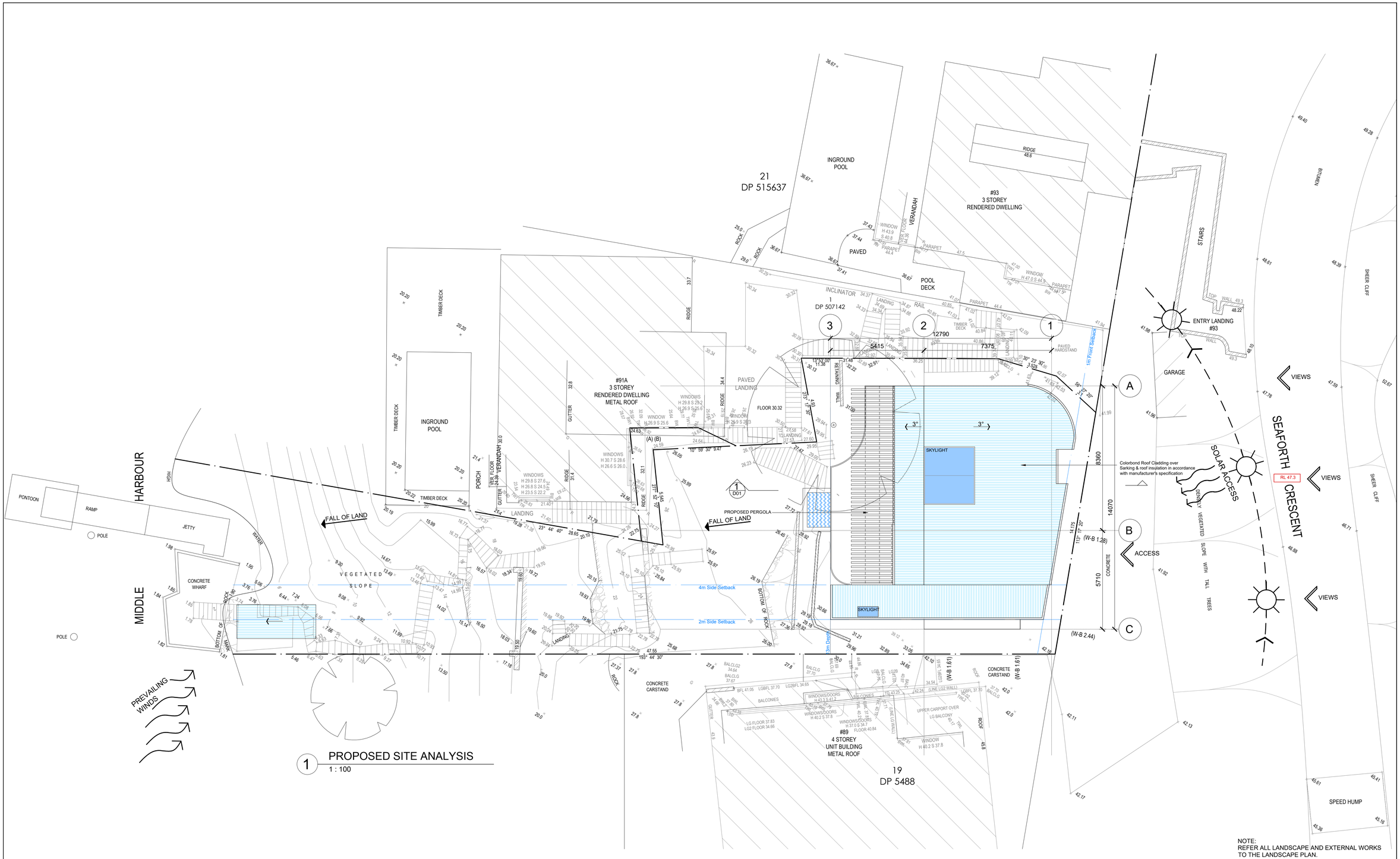
consent and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

44. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest habitable room within any other residential premise as defined under the Building Code of Australia, Protection of the Environment Operations Act 1997 and its statutory instruments as well as any relevant Environmental Protection Authority guidelines.

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

45. **Boatshed use**
At no time shall the boatshed be utilised or converted to provide for residential habitation. The boatshed must not be used for any other purpose than the storage of small boats, light watercraft and boating and marine equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities is not permitted.



1 PROPOSED SITE ANALYSIS
1 : 100

Drawn:

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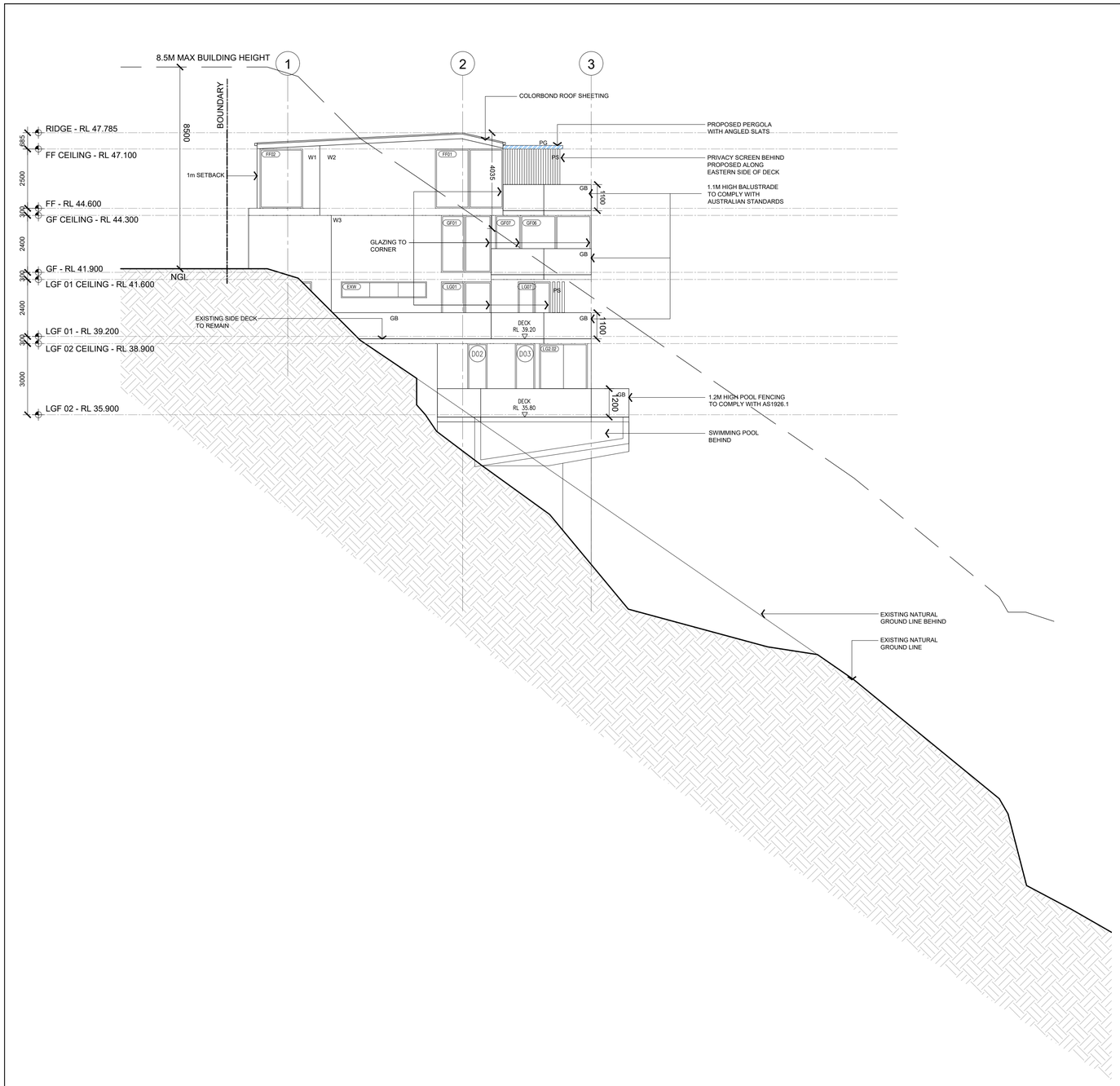
Project
Proposed Alterations and Additions
No. 91 Seaforth Crescent, Seaforth, NSW 2089
Lot 2 DP 507142

Client
Mr Salvemini
No. 91 Seaforth Crescent, Seaforth, NSW 2089

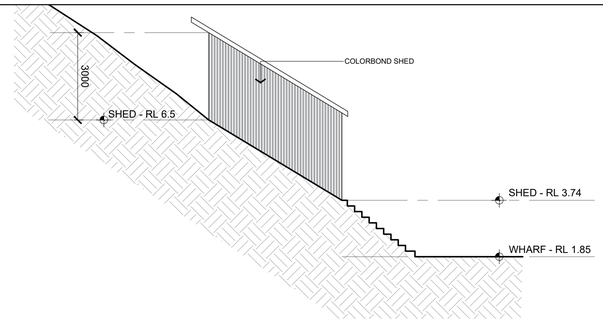
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F	REVISED DA SET AS PER COUNCIL'S COMMENTS	23.07.26
G	REVISED DA SET AS PER COUNCIL'S COMMENTS	28.07.26

Drg Title
DEVELOPMENT APPLICATION
PROPOSED SITE ANALYSIS

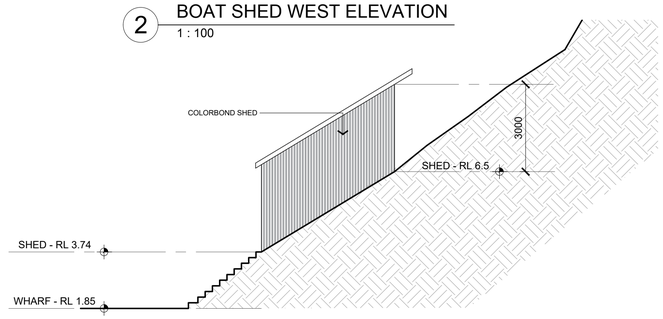
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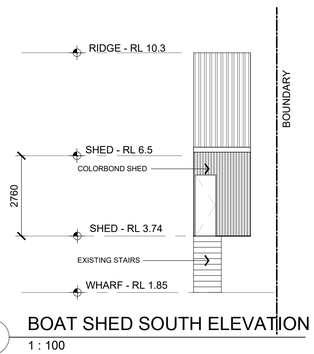
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1 : 100



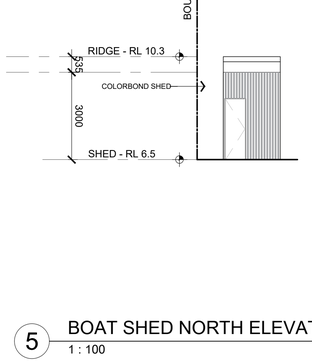
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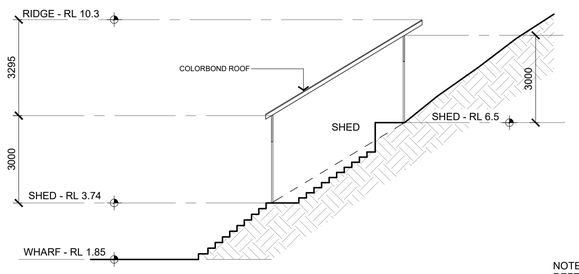
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1 : 100



4 BOAT SHED SOUTH ELEVATION
1 : 100



5 BOAT SHED NORTH ELEVATION
1 : 100



6 BOAT SHED SECTION
1 : 100

NOTE:
REFER ALL LANDSCAPE AND EXTERNAL WORKS TO THE LANDSCAPE PLAN.

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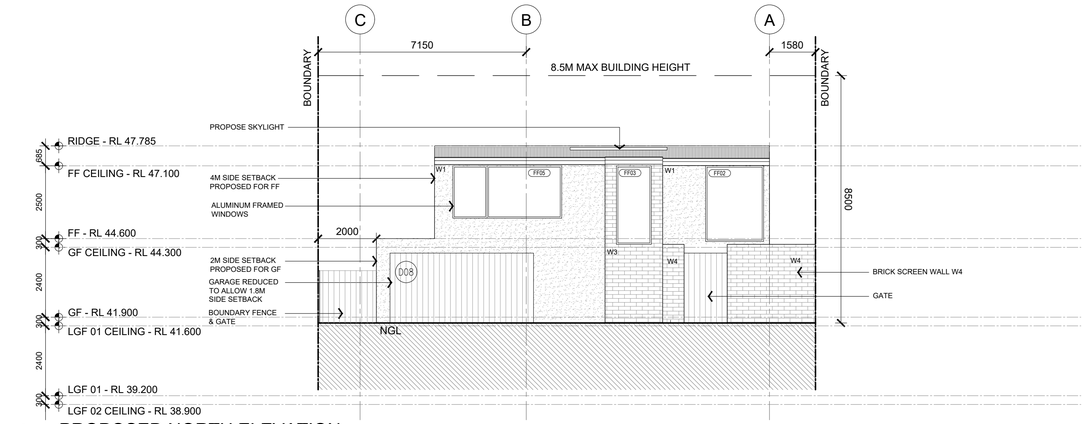
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Lot 2 DP 507142

Client
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No. 91 Seaforth Crescent, Seaforth, NSW 2089

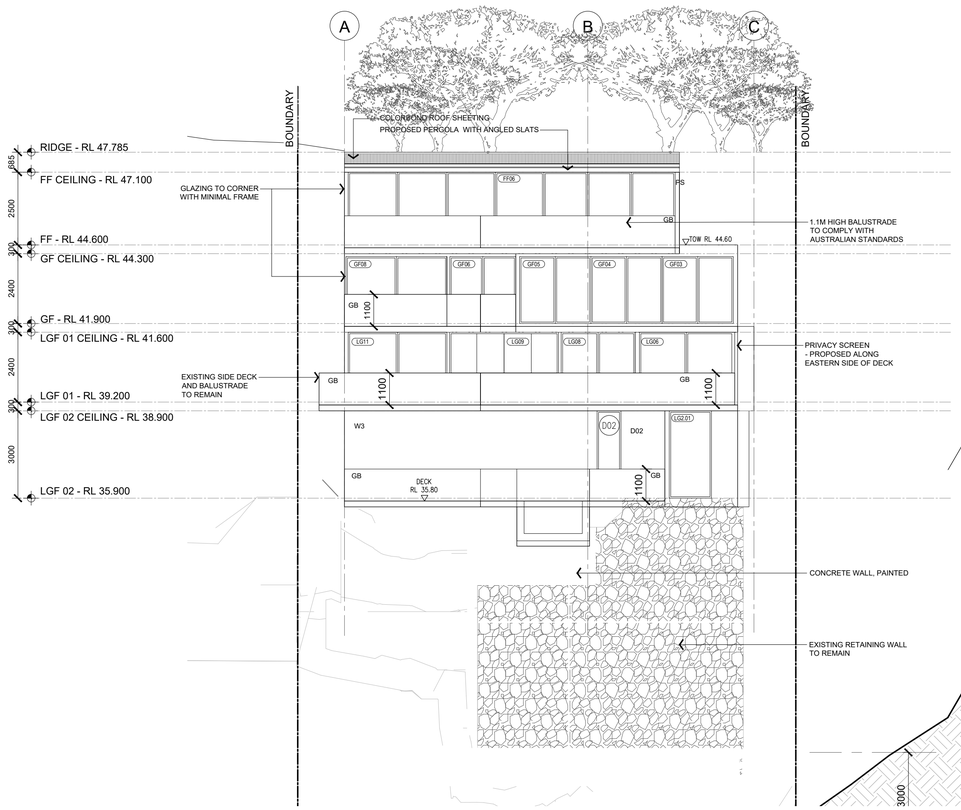
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DEVELOPMENT APPLICATION
PROPOSED WEST ELEVATION AND BOAT SHED ELEVATIONS & SECTION

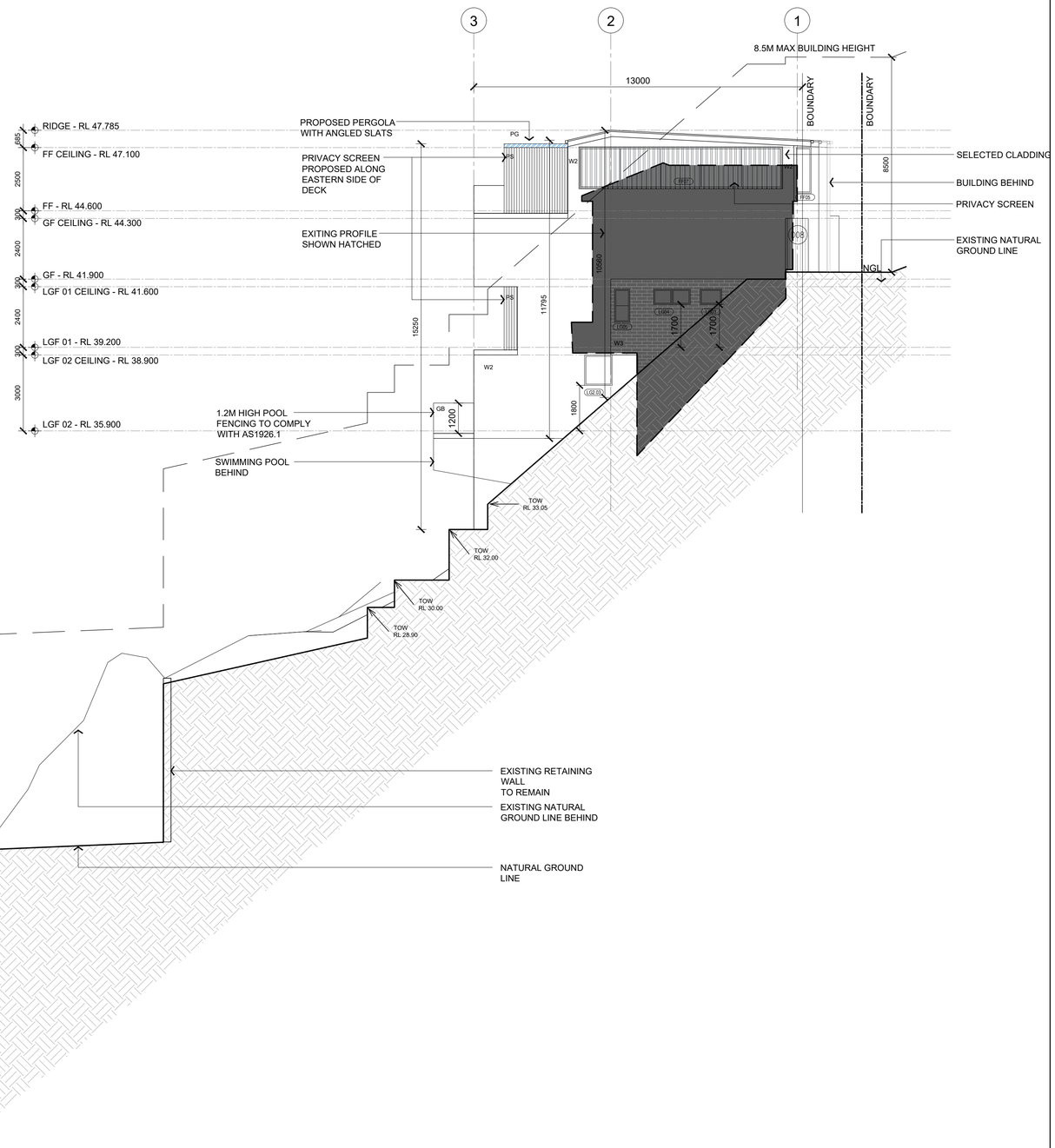
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1 PROPOSED NORTH ELEVATION
1 : 100



2 PROPOSED SOUTH ELEVATION
1 : 100



3 PROPOSED EAST ELEVATION
1 : 100

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Project
Proposed Alterations and Additions
No. 91 Seaforth Crescent, Seaforth, NSW 2089
Lot 2 DP 507142

Client
Mr Salvemini
No. 91 Seaforth Crescent, Seaforth, NSW 2089

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Corona Projects

DEVELOPMENT APPLICATION

Cl4.6 VARIATION REQUEST – Clause 4.3A Special Height Provisions

Partial demolition of an existing dwelling and construction of a new two and three storey dwelling

91 Seaforth Crescent, Seaforth

July 2026

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2.0 IS THE STANDARD A DEVELOPMENT STANDARD? 6

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4.0 THE ONUS ON THE APPLICANT 7

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PROJECT DETAILS

Client:	Mr. Dominic Salvemini
Subject land:	91 Seaforth Crescent Seaforth
Lot Description:	Lot 2 / - / DP507142
Proposed development:	Partial demolition of an existing dwelling and construction of a new two and three storey dwelling
Clause being varied:	Clause 4.3A Special Height Provisions
Extent of variation:	0.485m
The report is prepared by	Mathew Fortunato Bachelor of Architecture and Environments (USYD)
The report is reviewed by	Madeline Maric Bachelor of Planning (MQU)

I certify that the contents of the Clause 4.6 Variation request to the best of my knowledge, has been prepared as follows:

- In accordance with Section 4.12 of the Environmental Planning and Assessment Act 1979 and Clause 24 of the Environmental Planning and Assessment Regulation 2021;
- The statement contains all available information that is relevant to the environmental impact assessment of the proposed development;
- To the best of my knowledge the information contained in this report is neither false nor misleading.

Quality Management

Issue	Description	Date	Written By	Reviewed By
1	Final Report	30.07.2026	MF	MM

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1.0 BACKGROUND

This Clause 4.6 variation is a written request to vary a development standard to support a development application for the partial demolition of an existing dwelling and construction of a new two and three storey dwelling at 91 Seaforth Crescent Seaforth**.**

More specifically, the development application seeks consent for the following works.

- **Demolition** of internal and external components of the existing dwelling;
- **Construction** of two and three storey dwelling including a new pool, garage, lift, balcony, and deck; and the
- **Construction** of a boathouse.

Clause 4.3A Special Height Provisions within the Manly Local Environmental Plan 2013 (MLEP 2013) relates to the maximum height of a building relative to the height of the adjoining road and states the following:

> *(2) Despite clause 4.3 (2), the height of a building on a lot identified as "Special height provisions" on the Height of Buildings Map must not exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot.*

The height at the highest point of the road (Seaforth Crescent) adjoining the centre point of the lot boundary is RL47.3, as is demonstrated on the provided site plan (BDDS, 2026). The proposed dwelling has a maximum height of RL47.785 with a resulting non-compliance of 0.485m.

The documentation upon which this report has been prepared is as follows:

Description	Date	Author
Architectural Plans	July 2026	BDDS & Boss Designs
Clause 4.6 Variation (FSR)	July 2026	Corona Projects
Clause 4.6 Variation (Building Height – Cl4.3)	July 2026	Corona Projects
Statement of Environmental Effects	November 2025	Corona Projects

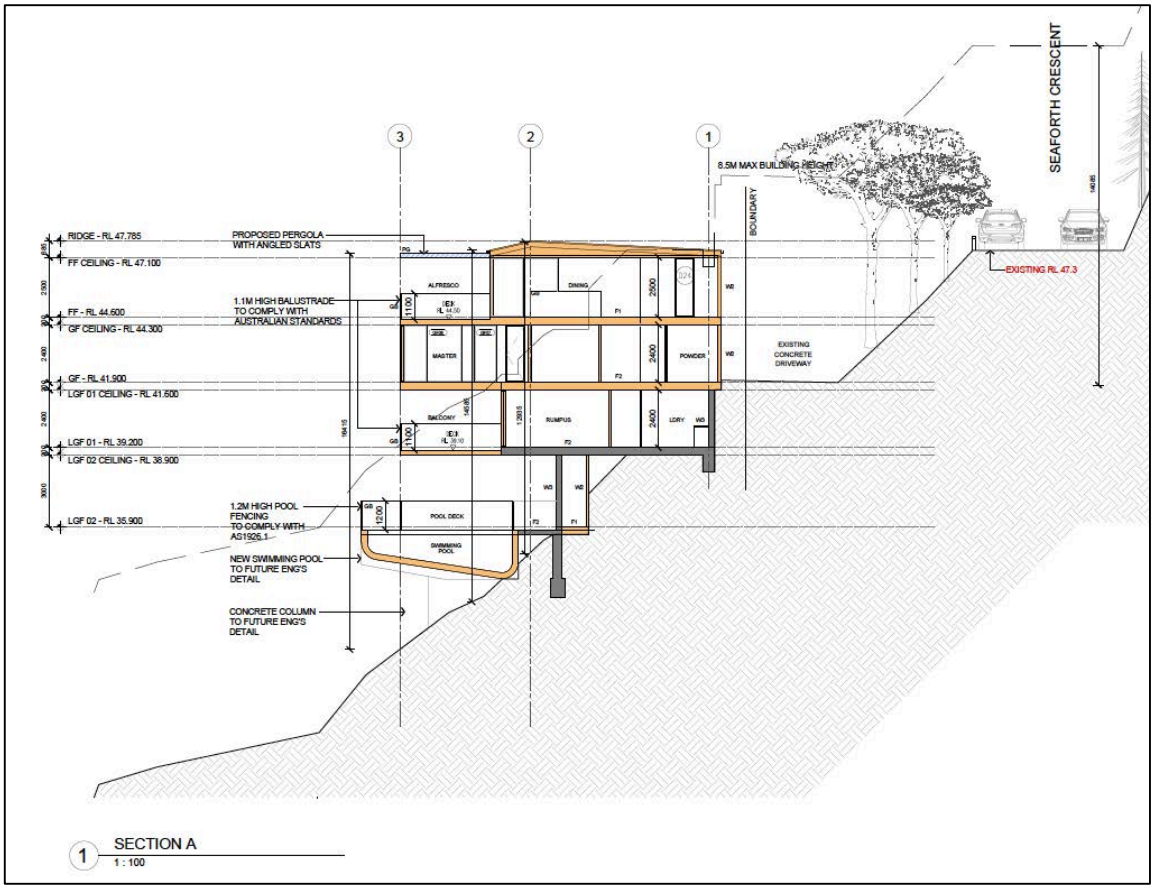


Figure 1: *Extract from Section A-A (BDDS & Boss Designs, 2026)*

2.0 IS THE STANDARD A DEVELOPMENT STANDARD?

Clause 4.3A (2) of the Manly Local Environmental Plan (LEP) 2013 states that:

> *(2) Despite clause 4.3 (2), the height of a building on a lot identified as "Special height provisions" on the Height of Buildings Map must not exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot.*

A development standard is defined in Section 1.4 of the Environmental Planning and Assessment Act 1979 ("EPA Act") to mean:

"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:

a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
b) the proportion or percentage of the area of a site which a building or work may occupy,
c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
d) the cubic content or floor space of a building,
e) the intensity or density of the use of any land, building or work,
f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
h) the volume, nature and type of traffic generated by the development,
i) road patterns,
j) drainage,
k) the carrying out of earthworks,
l) the effects of development on patterns of wind, sunlight, daylight or shadows,
m) the provision of services, facilities and amenities demanded by development,
n) the emission of pollution and means for its prevention or control or mitigation, and
o) such other matters as may be prescribed."

The height of buildings standards fall under subsection (c); therefore, the control is a development standard and Clause 4.6 of the Manly Local Environmental Plan (LEP) 2013 is applicable.

3.0 CLAUSE 4.6 OF THE MANLY LOCAL ENVIRONMENTAL PLAN (LEP) 2013

The Standard Instrument LEP contains its own variations clause (Clause 4.6) to allow the variation of development standards. 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) and case law suggests a similar approach to SEPP 1 may be taken in part.

There is abundant judicial guidance on how variations under Clause 4.6 variations should be assessed. Some of these cases are taken into consideration in this request for variation.

While it is not necessary to refer to case law, we do so as it has become customary in sustaining requests under Clause 4.6.

4.0 THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate: -

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 judgement by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* clarified the correct approach to Clause 4.6 variation requests, including that:

Paragraph 13 -15 of the judgement states: -

> *The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard*
>
> *The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see Woolworths Ltd v Pallas Newco Pty Ltd (2004) 61*

NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard.

The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.

Accordingly, the matters required to be demonstrated by cl 4.6(3) are set out below using the relevant principles established by the Court.

Clause 4.6 (3) (a) - Compliance with the development standard is unreasonable or unnecessary in this particular case.

In *Wehbe V Pittwater [2007] NSW LEC 827* (Wehbe) a five-part test was established in which a variation to a development standard is considered to be unreasonable or unnecessary as per Clause 4.6(3A). The five tests established in Wehbe are (emphasis added):

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard;***
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Satisfaction of any one of these tests is sufficient to demonstrate the compliance with the standard is unreasonable or unnecessary. This variation is based on the first test, which is addressed below.

Consistency with the objectives of the standard:

The first test of Wehbe requires demonstration that the objectives of a development standard can be achieved notwithstanding noncompliance with that particular standard.

The objective of Clause 4.4A are articulated at Clause 4.4A(1): -

(1) The objective of this clause is to maintain public views to Sydney Harbour from street level on local roads above steeply sloping sites on certain land.

At present, limited views of Sydney Harbour are available from the section of Seaforth Crescent located to the north-east of the subject site. These views are largely obscured due to the dense tree cover and foliage located in the area between the road and the subject site (Figure 3).

The proposed dwelling features a maximum height of RL47.785. The highest point of Seaforth Crescent adjoining the centre point of the subject lot boundary is RL47.3. This additional 485mm of building height above the level of Seaforth Crescent is not anticipated to have more than a negligible impact on existing public views of Sydney harbour over the subject site. This is attributed to the aforementioned dense foliage obscuring the existing views. Accordingly, the existing obscured public views of the waterway through the foliage are to be maintained.



Figure 2: *Existing view of Sydney Harbour from Seaforth Crescent over the subject site (Corona Projects, 2026)*

For the above reasons, I am of the view that the variation requested and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that the first test of Wehbe is achieved and thus strict compliance with the development standard is unreasonable or unnecessary in this particular case.

Clause 4.6 (3) (b) - That there are sufficient environmental planning grounds to justify contravening the development standard

Satisfaction as to sufficient environmental planning grounds is a matter for the Council to determine and can be site specific as set out in the judgement of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

Paragraph 23 -24 of the judgement states:

> *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
>
> *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

The term 'environmental planning grounds' is not defined and may be interpreted with wide scope as has been the practice of the Land and Environment Court. The environmental planning grounds supporting variation are on the basis of:

- Streetscape appearance

  A substantial vegetated buffer of approximately 6 to 8 metres in width separates the front boundary of the site from Seaforth Crescent. As visible in Figure 3, this dense canopy of trees and foliage forms a continuous visual screen that already heavily filters any outlook from this area of Seaforth Crescent toward the water, allowing only limited and fragmented views through the branches.

  Within this heavily screened setting the dwelling has been designed with restrained vertical proportions. Floor to ceiling heights are limited to 2.4 metres on the ground floor and 2.5 metres on the first floor, while the rear awning extends across only just over half the depth of the balcony. The portion of the roof that exceeds the control is limited to a width of 11.4 m within the 17 m site width at the front building line, leaving view corridors to either side. The exceedance itself is gradual, arising from the roof form, and is set well back from the road. These measures keep the overall building form modest, minimise visibility from the street and prevent any unnecessary upward projection that could otherwise interrupt the aforementioned sightlines across the site.

  Consequently, the proposed height variation will remain largely imperceptible from the public domain when compared to a compliance scheme and does not meaningfully alter the existing filtered outlook from Seaforth Crescent toward the water. The visual amenity and established character of the streetscape are therefore preserved.

- Consistency with adjoining development

  The established built-form character along the low side of Seaforth Crescent is predominantly characterised by four and five storey dwellings that step down the steep slope toward the rear as is evident in Figure 2. Numerous approved and constructed dwellings in the immediate vicinity (including Nos. 87, 89, 93 and 95 Seaforth Crescent) exhibit similar maximum building heights.

- Orderly and economic development of land

  Given the suitability of the site and the lack of impact arising from the development, the proposal is consistent with object (c) of the EP& Act 1979 to promote the orderly and economic development of land.

As set out in *'Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118',* the aforementioned environmental planning grounds do not rely on the benefits of the development as a whole, but rather they directly relate to the proposed height of buildings aspect that contravenes the development standard.

For the reasons detailed in this request, I am of the opinion that there are sufficient environmental planning grounds for Council to be satisfied that the request is adequate and to allow appropriate flexibility.

5.0 CONCLUSION

The purpose of the application is to apply for the demolition of an existing dwelling and construction of a new two and three storey dwelling at 91 Seaforth Crescent, Seaforth. The nature of the proposal necessitates a variation to the height of buildings development standard; however, the proposal will be commensurate in bulk and siting to surrounding development within the locality.

As development standards tend to be strictly numerical in nature, they fail to take into consideration the nature of the development, any site constraints, or qualitative aspects of the development or of the particular circumstances of the case. Clause 4.6 of the standard instrument LEP allows such an analysis to be carried out.

It has been demonstrated in this request that strict compliance with the height of buildings development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to form the opinion of satisfaction that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that Council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.

Prepared By:



Mathew Fortunato
Town Planner
Bachelor of Architecture and Environments (USYD)

Reviewed By:



Madeline Maric
Town Planner
Bachelor of Planning (MQU)
Planning Institute of Australia (Assoc.)

Corona Projects

DEVELOPMENT APPLICATION

Cl4.6 VARIATION REQUEST – Clause 4.4 Floor Space Ratio

Partial demolition of an existing dwelling and construction of a new two and three storey dwelling

91 Seaforth Crescent, Seaforth

July 2026

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PROJECT DETAILS

Client:	Mr. Dominic Salvemini
Subject land:	91 Seaforth Crescent, Seaforth
Lot Description:	Lot 2 / - / DP507142
Proposed development:	Partial demolition of an existing dwelling and construction of a new two and three storey dwelling
Clause being varied:	Clause 4.4 Floor Space Ratio
Extent of variation:	34.6%
The report is prepared by	Mathew Fortunato Bachelor of Architecture and Environments (USYD)
The report is reviewed by	Madeline Maric Bachelor of Planning (MQU)

I certify that the contents of the Clause 4.6 Variation request to the best of my knowledge, has been prepared as follows:

- In accordance with Section 4.12 of the Environmental Planning and Assessment Act 1979 and Clause 24 of the Environmental Planning and Assessment Regulation 2021;
- The statement contains all available information that is relevant to the environmental impact assessment of the proposed development;
- To the best of my knowledge the information contained in this report is neither false nor misleading.

Quality Management

Issue	Description	Date	Written By	Reviewed By
1	Final Report	01.12.2025	MF	MM
2	Adjusted Calculations	22.07.2026	MF	MF

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1.0 BACKGROUND

This Clause 4.6 variation is a written request to vary a development standard to support a development application for the partial demolition of an existing dwelling and the construction of a new two and three storey dwelling at 91 Seaforth Crescent, Seaforth.

More specifically, the development application seeks consent for the following works.

- **Demolition** of internal and external components of the existing dwelling;
- **Construction** of two and three storey dwelling including a new pool, garage, lift, balcony, and deck; and the
- **Construction** of a boathouse.

Clause 4.4 Floor Space Ratio within the Manly Local Environmental Plan 2013 (MLEP 2013) relates to the maximum FSR and states the following:

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The maximum FSR permitted for the site in accordance with the *Floor Space Ratio Map* is 0.4:1. The proposed development is permissible with consent within the C3 Environmental management zone.

The architectural plans indicate that the proposed development has a maximum FSR of 0.54:1 and a gross floor area of 309.8m^2. This results in a 34.6% variation to the development standard and non-compliance of 79.64m^2.

The documentation upon which this report has been prepared is as follows:

Description	Date	Author
Architectural Plans	July 2026	BDDS & Boss Designs
Clause 4.6 Variation (FSR)	July 2026	Corona Projects
Clause 4.6 Variation (Building Height – Cl4.3A)	July 2026	Corona Projects
Statement of Environmental Effects	November 2025	Corona Projects

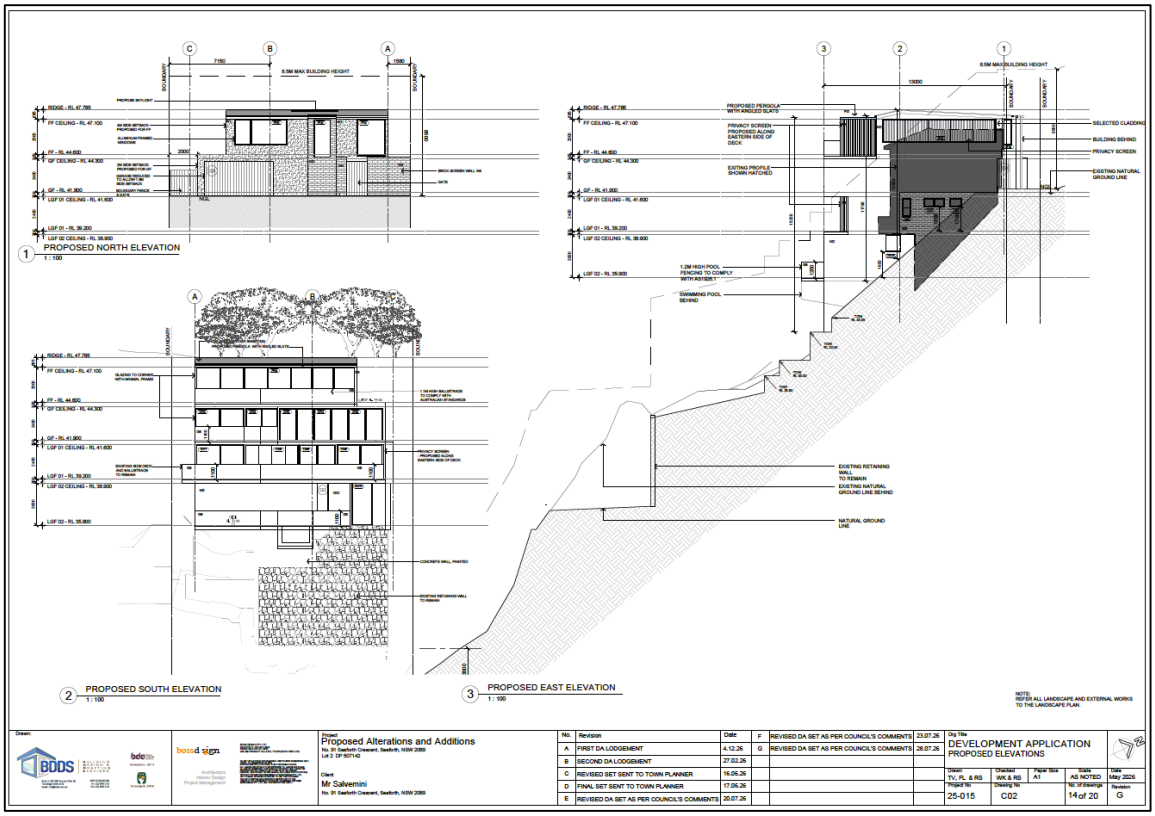


Figure 1: *Proposed Elevations (BDDS, 2026)*

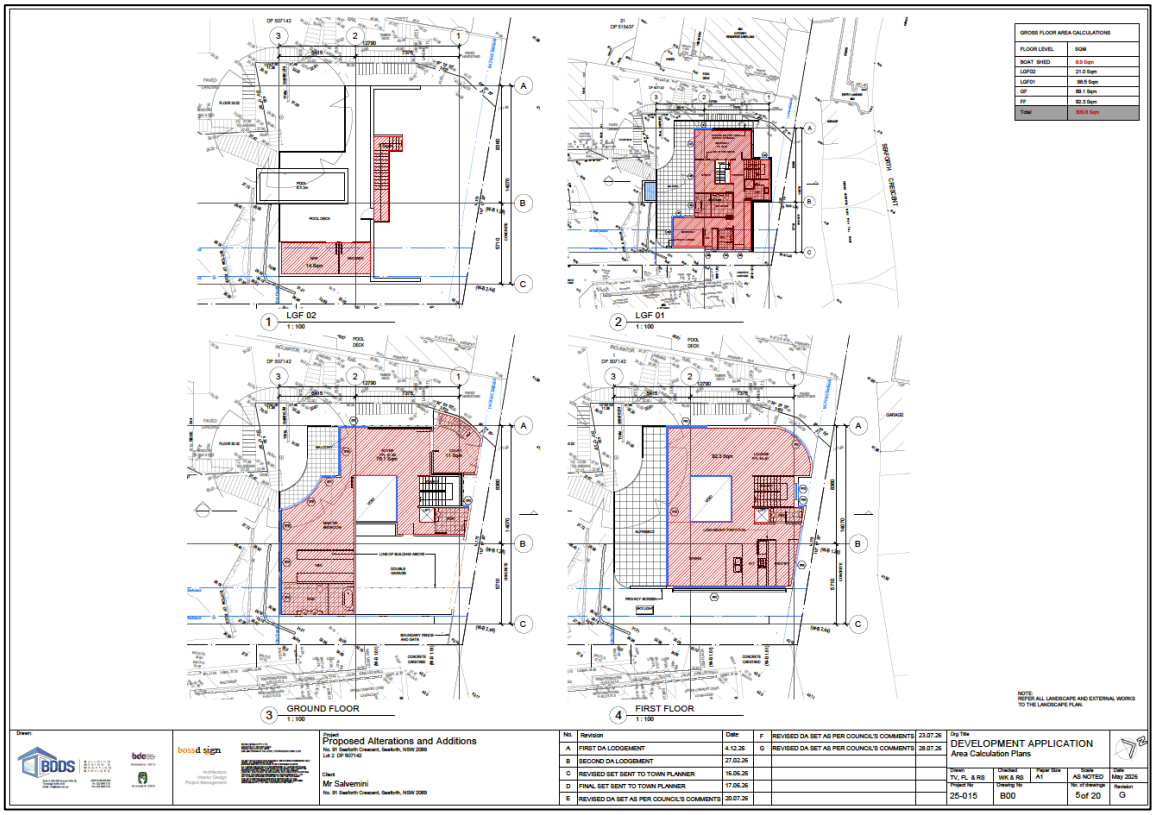


Figure 2: *GFA Calculation Plan (BDDS, 2026)*

2.0 IS THE STANDARD A DEVELOPMENT STANDARD?

Clause 4.4 of the Manly Local Environmental Plan (LEP) 2013 states that:

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

A development standard is defined in Section 1.4 of the Environmental Planning and Assessment Act 1979 ("EPA Act") to mean:

"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:

a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
b) the proportion or percentage of the area of a site which a building or work may occupy,
c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
d) the cubic content or floor space of a building,
e) the intensity or density of the use of any land, building or work,
f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
h) the volume, nature and type of traffic generated by the development,
i) road patterns,
j) drainage,
k) the carrying out of earthworks,
l) the effects of development on patterns of wind, sunlight, daylight or shadows,
m) the provision of services, facilities and amenities demanded by development,
n) the emission of pollution and means for its prevention or control or mitigation, and
o) such other matters as may be prescribed."

The Floor Space Ratio control falls under subsection (d); therefore, the control is a development standard and Clause 4.6 of the Manly Local Environmental Plan 2013 is applicable.

3.0 CLAUSE 4.6 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

The Standard Instrument LEP contains its own variations clause (Clause 4.6) to allow the variation of development standards. 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) and case law suggests a similar approach to SEPP 1 may be taken in part.

There is abundant judicial guidance on how variations under Clause 4.6 variations should be assessed. Some of these cases are taken into consideration in this request for variation. While it is not necessary to refer to case law, we do so as it has become customary in sustaining requests under Clause 4.6.

4.0 THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate: -

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 judgement by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* clarified the correct approach to Clause 4.6 variation requests, including that:

Paragraph 13 -15 of the judgement states: -

> *The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard*
>
> *The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see Woolworths Ltd v Pallas Newco Pty Ltd (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard.*

The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.

Accordingly, the matters required to be demonstrated by cl 4.6(3) are set out below using the relevant principles established by the Court.

Clause 4.6 (3) (a) - Compliance with the development standard is unreasonable or unnecessary in this particular case.

In *Wehbe V Pittwater [2007] NSW LEC 827* (Wehbe) a five-part test was established in which a variation to a development standard is considered to be unreasonable or unnecessary as per Clause 4.6(3A). The five tests established in Wehbe are (emphasis added):

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard;***
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Satisfaction of any one of these tests is sufficient to demonstrate the compliance with the standard is unreasonable or unnecessary. This variation is based on the first test, which is addressed below.

Consistency with the objectives of the standard:

The first test of Wehbe requires demonstration that the objectives of a development standard can be achieved notwithstanding noncompliance with that particular standard. The objectives of Clause 4.4 are articulated at Clause 4.4 (1): -

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,

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

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

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

(e) to provide for the viability of 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.

Objective (a) The desired streetscape character is informed by the relevant objectives and controls within Part 3.1.1 of the Manly Development Control Plan 2013 (MDCP 2013). These controls seek to ensure that new development respects and enhances the established local character by responding appropriately to the predominant building forms, scale, materials, colours, and landscape setting. In accordance with these controls, the proposed development is consistent with the prevailing pattern of built form along the low side of Seaforth Crescent, as clearly demonstrated in Figure 2. Accordingly, the bulk, scale, and overall presentation of the proposal are considered to be compatible with both the existing and desired future streetscape character.

Objective (b) The bulk and scale of the proposal, a stepped two and three storey dwelling, is directly in line with the prevailing character of development along the low side of Seaforth Crescent, populated by four and five storey developments as are visible in Figure 3. The proposal is directly in line with the established bulk and scale of adjoining residential development notwithstanding the FSR non-compliance. No important townscape or landscape features are obscured by the proposal.



***Figure 3**: Existing dwelling aerial imagery (2025) Subject site identified with a red arrow (Annotated by Corona Projects)*

Objective (c) The site retains a compliant provision of landscaped area, with the bulk of the development sited on existing built upon area. Accordingly, the visual relationship between the built form and landscaped area is to be maintained.

Objective (d) The proposal is sited towards the front of the site predominantly on existing built upon area, save for the boat shed, and is not anticipated to impact the use of the pubic use of the adjoining waterway or streetscape.

Objective (e) The site is not located in the E1 land zone.

For the above reasons, I am of the view that the variation requested and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that the first test of Wehbe is achieved and thus strict compliance with the development standard is unreasonable or unnecessary in this particular case.

Clause 4.6 (3) (b) - That there are sufficient environmental planning grounds to justify contravening the development standard

Satisfaction as to sufficient environmental planning grounds is a matter for the Council to determine and can be site specific as set out in the judgement of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

Paragraph 23 -24 of the judgement states: -

> *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
>
> *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

The term 'environmental planning grounds' is not defined and may be interpreted with wide scope as has been the practice of the Land and Environment Court. The environmental planning grounds supporting variation are on the basis of:

- Consistency with the FSR exemption in the Manly DCP 2013

  Part 4.1.3.1 'Exceptions to FSR for Undersized Lots' of the Manly DCP 2013 specifies that:

  On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied.

  The subject site measures 575.4m^2 in total area. This is less than the 1150m^2 minimum lot size required as per Clause 4.1 of the Manly LEP 2013. Thus, the FSR exceptions under Part 4.2.3.1 of the DCP apply to the subject development.

  Control (a) prescribes the maximum variation to FSR for undersized lots as follows:

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

Subzones on the LEP Lot Size (LSZ) Map	***Maximum variation to FSR for undersized lots***
Area 'C' on the LEP LSZ map	*Calculation of FSR based on 250 sqm lot size/ site area*
Area 'D' on the LEP LSZ map	*Calculation of FSR based on 300 sqm lot size/ site area*
Area 'I' on the LEP LSZ map	*Calculation of FSR based on 500 sqm lot size/ site area*
Area 'M' on the LEP LSZ map	*Calculation of FSR based on 600 sqm lot size/ site area*
Areas 'R','T'&'U' on the LEP LSZ map	*Calculation of FSR based on 750 sqm lot size/ site area*

Figure 30 - Extent of FSR Variation for Undersized Lots

  The proposal is located within area U on the LEP lot size map. The maximum permissible FSR is 0.4:1. Accordingly, for a site area of 750 m², this yields a maximum allowable GFA of 300m².

  The proposed development has a GFA of 309.8m², resulting in a minor exceedance of 9.8m² or 3.2% above the control. This 3.2% variation is considered negligible and is not expected to generate any discernible adverse environmental, amenity, or visual impacts.

  Noting that the proposed 8.9m2 boat shed encompasses the majority of the non-compliant floor area and having regard to the prevailing built-form character along the low side of Seaforth Crescent, which is dominated by four and five storey dwellings, the additional 9.8m² of floor area would be largely imperceptible when viewed from the public domain and would not substantially differ from a compliant scheme of 300 m² GFA. Thus, the variation is considered reasonable.

- Consistency with adjoining development

  The established built-form character along the low side of Seaforth Crescent is predominantly characterised by four and five storey dwellings that step down the steep slope toward the rear as is evident in Figure 3. Numerous existing dwellings in the immediate vicinity of the subject site exhibit large multi storey building footprints greater than that of the proposed dwelling.

  Accordingly, the overall bulk and scale of the proposed dwelling will be consistent with, and in many instances subservient to, the prevailing built form pattern of the locality.

- Distribution of the floor space

  The additional floor space is distributed across the stepped two- and three-storey form that follows the steep topography. Retaining suitable lower footing and wall sections provides structural and construction benefits, minimises excavation and site disturbance, and allows the new upper levels to be set back and articulated in a manner consistent with the prevailing built form along the low side of Seaforth Crescent. This approach does not increase bulk or scale beyond what is already characteristic of the locality and supports the orderly redevelopment of the site.

- Orderly and economic development of land

  Given the suitability of the site and the lack of impact arising from the development, the proposal is consistent with object (c) of the EP& Act 1979 to promote the orderly and economic development of land.

As set out in *'Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118',* the aforementioned environmental planning grounds do not rely on the benefits of the development as a whole, but rather they directly relate to the proposed Floor Space Ratio aspect that contravenes the development standard.

For the reasons detailed in this request, I am of the opinion that there are sufficient environmental planning grounds for Council to be satisfied that the request is adequate and to allow appropriate flexibility.

5.0 CONCLUSION

The purpose of the application is to apply for the partial demolition of an existing dwelling and construction of a new two and three storey dwelling at 91 Seaforth Crescent, Seaforth. The nature of the proposal necessitates a variation to the Floor Space Ratio development standard; however, the proposal will be commensurate in bulk and siting to surrounding development within the locality.

As development standards tend to be strictly numerical in nature, they fail to take into consideration the nature of the development, any site constraints, or qualitative aspects of the development or of the particular circumstances of the case. Clause 4.6 of the standard instrument LEP allows such an analysis to be carried out.

It has been demonstrated in this request that strict compliance with the Floor Space Ratio development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to form the opinion of satisfaction that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that Council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.

Prepared By:	Reviewed By:
	
Mathew Fortunato	Madeline Maric
Town Planner	Town Planner
Bachelor of Architecture and Environments (USYD)	**Bachelor of Planning (MQU)**
Planning Institute of Australia (Assoc.)	**Planning Institute of Australia (Assoc.)**

Corona Projects

DEVELOPMENT APPLICATION

Cl4.6 VARIATION REQUEST – Clause 4.3 Height of Buildings

Partial demolition of an existing dwelling and construction of a new two and three storey dwelling

91 Seaforth Crescent, Seaforth

July 2026

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PROJECT DETAILS

Client:	Mr. Dominic Salvemini
Subject land:	91 Seaforth Crescent Seaforth
Lot Description:	Lot 2 / - / DP507142
Proposed development:	Partial demolition of an existing dwelling and construction of a new two and three storey dwelling
Clause being varied:	Clause 4.3 Height of Buildings
Extent of variation:	7.92m / 93.1% (Cl4.3)
The report is prepared by	Mathew Fortunato Bachelor of Architecture and Environments (USYD)
The report is reviewed by	Madeline Maric Bachelor of Planning (MQU)

I certify that the contents of the Clause 4.6 Variation request to the best of my knowledge, has been prepared as follows:

- In accordance with Section 4.12 of the Environmental Planning and Assessment Act 1979 and Clause 24 of the Environmental Planning and Assessment Regulation 2021;
- The statement contains all available information that is relevant to the environmental impact assessment of the proposed development;
- To the best of my knowledge the information contained in this report is neither false nor misleading.

Quality Management

Issue	Description	Date	Written By	Reviewed By
1	Final Report	01.12.2025	MF	MM
2	Adjusted Calculations	24.07.2026	MF	MF

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1.0 BACKGROUND

This Clause 4.6 variation is a written request to vary a development standard to support a development application for the partial demolition of an existing dwelling and construction of a new two and three storey dwelling at 91 Seaforth Crescent Seaforth**.**

More specifically, the development application seeks consent for the following works.

- **Demolition** of internal and external components of the existing dwelling;
- **Construction** of two and three storey dwelling including a new pool, garage, lift, balcony, and deck; and the
- **Construction** of a boathouse.

Clause 4.3 Height of buildings within the Manly Local Environmental Plan 2013 (MLEP 2013) relates to the maximum height of a building and states the following:

> *(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The maximum building height permitted for the site in accordance with the *Height of Buildings Map* is 8.5 metres. The proposed development is permissible with consent within the C3 Environmental management zone. The architectural plans indicate that the proposed development has a maximum building height of 16.415m. This results in a 93.1% variation to the development standard and non-compliance of 7.92m.

The documentation upon which this report has been prepared is as follows:

Description	Date	Author
Architectural Plans	July 2026	BDDS & Boss Designs
Clause 4.6 Variation (FSR)	July 2026	Corona Projects
Clause 4.6 Variation (Building Height – Cl4.3A)	July 2026	Corona Projects
Statement of Environmental Effects	November 2025	Corona Projects

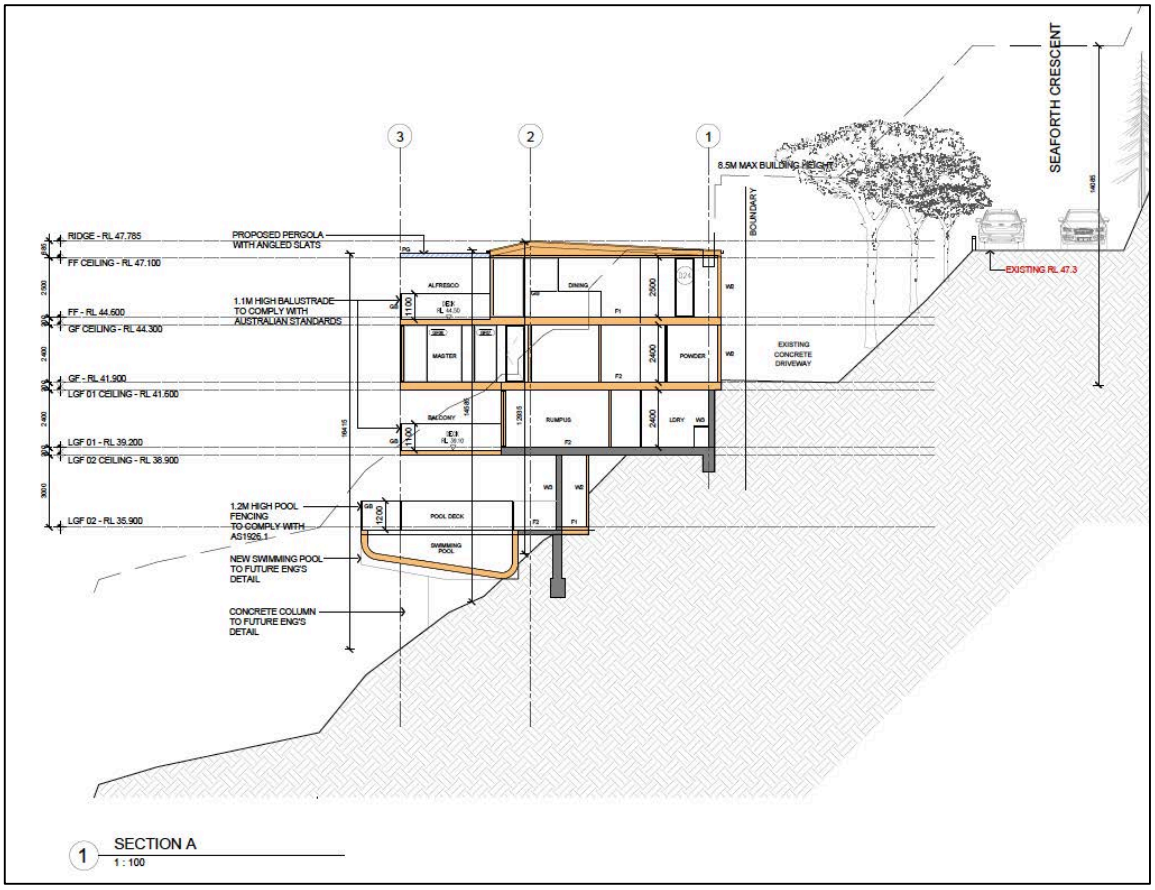


Figure 1: *Extract from Section A-A (BDDS & Boss Designs, 2026)*

2.0 IS THE STANDARD A DEVELOPMENT STANDARD?

Clause 4.3 (2) of the Manly Local Environmental Plan (LEP) 2013 states that:

> *(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

A development standard is defined in Section 1.4 of the Environmental Planning and Assessment Act 1979 ("EPA Act") to mean:

"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:

a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
b) the proportion or percentage of the area of a site which a building or work may occupy,
c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
d) the cubic content or floor space of a building,
e) the intensity or density of the use of any land, building or work,
f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
h) the volume, nature and type of traffic generated by the development,
i) road patterns,
j) drainage,
k) the carrying out of earthworks,
l) the effects of development on patterns of wind, sunlight, daylight or shadows,
m) the provision of services, facilities and amenities demanded by development,
n) the emission of pollution and means for its prevention or control or mitigation, and
o) such other matters as may be prescribed."

The height of buildings standard falls under subsection (c); therefore, the control is a development standard and Clause 4.6 of the Manly Local Environmental Plan (LEP) 2013 is applicable.

3.0 CLAUSE 4.6 OF THE MANLY LOCAL ENVIRONMENTAL PLAN (LEP) 2013

The Standard Instrument LEP contains its own variations clause (Clause 4.6) to allow the variation of development standards. 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) and case law suggests a similar approach to SEPP 1 may be taken in part.

There is abundant judicial guidance on how variations under Clause 4.6 variations should be assessed. Some of these cases are taken into consideration in this request for variation.

While it is not necessary to refer to case law, we do so as it has become customary in sustaining requests under Clause 4.6.

4.0 THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate: -

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 judgement by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* clarified the correct approach to Clause 4.6 variation requests, including that:

Paragraph 13 -15 of the judgement states: -

> *The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard*
>
> *The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see Woolworths Ltd v Pallas Newco Pty Ltd (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl*

4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard.

The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.

Accordingly, the matters required to be demonstrated by cl 4.6(3) are set out below using the relevant principles established by the Court.

Clause 4.6 (3) (a) - Compliance with the development standard is unreasonable or unnecessary in this particular case.

In *Wehbe V Pittwater [2007] NSW LEC 827* (Wehbe) a five-part test was established in which a variation to a development standard is considered to be unreasonable or unnecessary as per Clause 4.6(3A). The five tests established in Wehbe are (emphasis added):

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard;***
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Satisfaction of any one of these tests is sufficient to demonstrate the compliance with the standard is unreasonable or unnecessary. This variation is based on the first test, which is addressed below.

Consistency with the objectives of the standard:

The first test of Wehbe requires demonstration that the objectives of a development standard can be achieved notwithstanding noncompliance with that particular standard.

The objectives of Clause 4.4 are articulated at Clause 4.4(1): -

1) The objectives of this clause are as follows—

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

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

(c) to minimise disruption to the following—

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

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

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

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

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

Objective (a) The desired streetscape character is informed by the relevant objectives and controls within Part 3.1.1 of the Manly Development Control Plan 2013 (MDCP 2013). These controls seek to ensure that new development respects and enhances the established local character by responding appropriately to the predominant building forms, scale, materials, colours, and landscape setting. In accordance with these controls, the proposed development is consistent with the prevailing pattern of built form along the low side of Seaforth Crescent, as clearly demonstrated in Figure 2. Accordingly, building height and roof form of the proposal are considered to be compatible with both the existing and desired future streetscape character.

Objective (b) The bulk and scale of the proposal, a stepped two and three storey dwelling, is directly in line with the prevailing character of development along with low side of Seaforth Crescent. As is visible in figure 2, four and five storey developments are prevalent along the low side of Seaforth Crescent. The proposal will be directly in line with the established bulk and scale of adjoining residential development, notwithstanding the building height non-compliance.



***Figure 2**: Existing dwelling aerial imagery (2025) Subject site identified with a red arrow (Annotated by Corona Projects)*

Objective (c) The proposed development is not expected to cause any view loss from the public domain. The modest height exceedance sits only fractionally above the highest point of Seaforth Crescent and, when combined with the dense intervening foliage, remains effectively screened from street-level viewpoints.

Furthermore, the proposal will not unreasonably impact private views from adjoining properties. This outcome is achieved through the provision of a large rear setback, combined with the fact that each neighbouring dwelling currently enjoys expansive, unimpeded panoramic views to the rear. The proposed built form is located substantially behind the primary viewing corridors of these properties and is not anticipated to interrupt significant water views. Accordingly, the development ensures that view sharing remains equitable and that significant views are retained in accordance with the principles established in *Tenacity Consulting v Warringah [2004] NSWLEC 140*.

Objective (d) The subject site and adjoining sites retain compliant solar access to private open spaces and habitable rooms in accordance with the requirements of the MDCP 2013.

Objective (e) The proposal, located on a site within the C3 Environmental Management zone, does not require the removal of any significant vegetation or canopy trees. The height and bulk of the proposed dwelling are a direct response to the site's steep topography, which necessitates a stepped built form to appropriately respond to the land's natural contours. The proposal is not anticipated to conflict with bushland and surrounding land uses.

For the above reasons, I am of the view that the variation requested and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that the first test of Wehbe is achieved and thus strict compliance with the development standard is unreasonable or unnecessary in this particular case.

Clause 4.6 (3) (b) - That there are sufficient environmental planning grounds to justify contravening the development standard

Satisfaction as to sufficient environmental planning grounds is a matter for the Council to determine and can be site specific as set out in the judgement of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

Paragraph 23 -24 of the judgement states:

> *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
>
> *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify*

contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

The term 'environmental planning grounds' is not defined and may be interpreted with wide scope as has been the practice of the Land and Environment Court. The environmental planning grounds supporting variation are on the basis of:

- Topography of the site

  The steep slope of the site necessitates a reasonable height variation. The land falls significantly from the street to the rear, limiting the ability to keep the roof form within the 8.5m height limit. The proposed variation applies to a limited portion of the upper floor, roof form, and awning structure in order to create a more practical building footprint and avoid an overly fragmented built form.

- Streetscape appearance

  A substantial vegetated buffer of approximately 6 to 8 metres in width separates the front boundary of the site from Seaforth Crescent. As visible in Figure 3 below, this dense canopy of trees and foliage forms a continuous visual screen that heavily filters any outlook from this area of Seaforth Crescent toward the subject site, allowing only limited and fragmented views through the branches.

  Within this heavily screened setting the dwelling has been designed with restrained vertical proportions. Floor to ceiling heights are limited to 2.4 metres on the ground floor and 2.5 metres on the first floor, while the rear awning extends across only just over half the depth of the balcony. The portion of the roof that exceeds the control is limited to a width of 11.4 m within the 17 m site width at the front building line, leaving view corridors to either side. The exceedance itself is gradual, arising from the roof form, and is set well back from the road. These measures keep the overall building form modest, minimise visibility from the street and prevent any unnecessary upward projection that could otherwise interrupt the aforementioned sightlines across the site.

  Consequently, the proposed height variation will be largely imperceptible from the public domain when compared to a compliance scheme. The visual amenity and established character of the streetscape are therefore preserved.



Figure 3: *Existing view of Sydney Harbour from Seaforth Crescent over the subject site (Corona Projects, 2026)*

- Consistency with adjoining development

  The established built-form character along the low side of Seaforth Crescent is predominantly characterised by four and five storey dwellings that step down the steep slope toward the rear as is evident in Figure 2. Numerous approved and constructed dwellings in the immediate vicinity (including Nos. 87, 89, 93 and 95 Seaforth Crescent) exhibit overall building heights well in excess of 8.5m.

  These existing dwellings achieve their additional height for the same reasons advanced in this application, namely, the need to respond to the significant fall of the land. The proposed dwelling at No. 91 sits comfortably within the height envelope already established by these neighbouring properties and presents a scale, bulk and vertical articulation that is consistent with the prevailing and built-form pattern.

- Prior excavation of the site

  The existing dwelling has been partially excavated into the hillside, creating an artificial and lowered height plane. In the judgement of Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, a similar variation to maximum building height was proposed that included pre-existing excavation. The court stated at [74] that –

  > *"the prior excavation of the site within the footprint of the existing building, which distorts the height of the buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6 (3)(b) of LEP 2014."*

  It is considered that this application proposes a height variation under similar conditions and is consistent with this aspect of the judgment, given the existing excavation on site.

- Orderly and economic development of land

  Given the suitability of the site and the lack of impact arising from the development, the proposal is consistent with object (c) of the EP& Act 1979 to promote the orderly and economic development of land.

As set out in *'Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118',* the aforementioned environmental planning grounds do not rely on the benefits of the development as a whole, but rather they directly relate to the proposed height of buildings aspect that contravenes the development standard.

For the reasons detailed in this request, I am of the opinion that there are sufficient environmental planning grounds for Council to be satisfied that the request is adequate and to allow appropriate flexibility.

5.0 CONCLUSION

The purpose of the application is to apply for the demolition of an existing dwelling and construction of a new two and three storey dwelling at 91 Seaforth Crescent, Seaforth. The nature of the proposal necessitates a variation to the height of buildings development standard; however, the proposal will be commensurate in bulk and siting to surrounding development within the locality.

As development standards tend to be strictly numerical in nature, they fail to take into consideration the nature of the development, any site constraints, or qualitative aspects of the development or of the particular circumstances of the case. Clause 4.6 of the standard instrument LEP allows such an analysis to be carried out.

It has been demonstrated in this request that strict compliance with the height of buildings development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to form the opinion of satisfaction that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that Council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.

Prepared By:



Mathew Fortunato
Town Planner
Bachelor of Architecture and Environments (USYD)

Reviewed By:



Madeline Maric
Town Planner
Bachelor of Planning (MQU)
Planning Institute of Australia (Assoc.)

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ITEM 5.5 DA2026/0645 - 13 GRANDVIEW PARADE MONA VALE - DEMOLITION WORKS AND CONSTRUCTION OF A DUAL OCCUPANCY

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the minimum subdivision lot size for strata plan schemes under Clause 4.2A 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 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.

The Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2026/0645 for Demolition works and construction of a dual occupancy at Lot 1 DP 6195, 13 Grandview Parade MONA VALE NSW 2103 subject to the conditions set out in the Assessment Report.

Reporting manager:	Executive Manager Development Assessment
Attachments:	1. Assessment Report [**5.5.1** - 47 pages] 2. Site Plans & Elevations [**5.5.2** - 6 pages] 3. Clause 4.6 [**5.5.3** - 9 pages]

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2026/0645

Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 1 DP 6195, 13 Grandview Parade MONA VALE NSW 2103
Proposed Development:	Alterations and additions to an existing dwelling and construction of a dual occupancy (attached), including strata subdivision
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Applicant:	Lavish Contracting Pty Ltd

Application Lodged:	27/05/2026
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	19/08/2026 to 02/09/2026
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.2A Minimum subdivision lot size for strata plan schemes in certain rural, residential and conservation zones: Lot 1: 19.2%; Lot 2: 42.78%
Recommendation:	Approval

Estimated Cost of Works:	$ 1,086,170.00

EXECUTIVE SUMMARY

This Development Application seeks consent for alterations and additions to an existing dwelling and construction of a dual occupancy (attached), including strata subdivision.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the proposed strata subdivision seeks a variation exceeding 10% to the minimum subdivision lot size for strata plan schemes

under Clause 4.2A of the *Pittwater Local Environmental Plan 2014* (PLEP). Proposed Lots 1 and 2 have areas of 565.6m² and 400.5m² respectively, representing variations of 19.2% and 42.8% to the minimum lot size requirement of 700m². The application is accompanied by a written Clause 4.6 writen request seeking to vary the development standard. The request demonstrates that strict compliance with the standard is unreasonable and unnecessary in the circumstances of the case, noting that the attached dual occupancy is a permissible use on the land, complies with the minimum lot size requirement under Clause 4.1B, and the strata subdivision will not result in any fragmentation of the land.

The application was notified in accordance with the Northern Beaches Community Participation Plan. During the notification period, one (1) submission objecting to the proposal was received. The submission raised concerns relating to:

- Setbacks
- Privacy
- Bulk and scale

These matters have been considered as part of the assessment and are not considered to warrant refusal of the application. Conditions of consent have been recommended where appropriate.

The assessment concludes that the proposal demonstrates an acceptable built form outcome, with the height, bulk and scale responding appropriately to the site's constraints and the applicable planning controls. The development is also considered to maintain an acceptable level of residential amenity for adjoining properties, including with respect to privacy, solar access and visual impacts.

Overall, the proposal is consistent with the relevant environmental planning instruments and statutory requirements applicable to the site. Accordingly, it is recommended that the NBLPP grant development consent, subject to the recommended conditions of consent attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

Development application for alterations and additions to an existing dwelling and construction of a dual occupancy (attached), including strata subdivision. Specifically, the works involve the construction of a two-storey dwelling with a double garage that will form as dual occupancy (attached) development with the existing dwelling house. The proposal in detail includes:

- Partial demolition works, including the removal of an existing garage.
- Construction of a two-storey dwelling with five bedrooms, three bathrooms, living areas and service rooms.
- Associated landscaping work.

AMENDED APPLICATION

Following a preliminary assessment of the application, Council issued a Request for Information (RFI) to the applicant on 23 July 2026, outlining concerns with the proposal.

These concerns related to building height, built form and site planning, amenity impacts, access and parking, flooding and other matters of insufficient information.

To address these concerns, the applicant submitted amended plans on 10 August 2026.

The application includes the following amendments:

- Recharacterisation of the proposal from a detached dual occupancy to an attached dual occupancy.
- Addition to the existing dwelling's living room to connect with the proposed garage.
- Increase in the southern setback by 2.7 metres, resulting in a total setback of 8.8 metres.
- Increase in the first-floor eastern setback by 0.9 metres, resulting in a total setback of 2.8 metres.
- Reduction in the ridge height by 70 mm to RL 25.78.
- Deletion of the existing driveway.
- Deletion of the first-floor ensuite window.

Community Participation Plan

Due to the recharacterisation of the development, formal re-notification was required. Notification was undertaken in accordance with the Northern Beaches Community Participation Plan, ensuring that affected and adjoining landowners were provided the opportunity to comment on the amended proposal.

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 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation
Pittwater Local Environmental Plan 2014 - 5.21 Flood planning
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.8 Dual Occupancy Specific Controls
Pittwater 21 Development Control Plan - D9.6 Front building line
Pittwater 21 Development Control Plan - D9.10 Landscaped Area - General

SITE DESCRIPTION

Property Description:	Lot 1 DP 6195 , 13 Grandview Parade MONA VALE NSW 2103
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Grandview Parade and the eastern side of Orana Road. The site is irregular in shape with a frontage of 16.48 metres along Grandview Parade and 66.53 metres along Orana Road. The site has a surveyed area of 966.1m². The site is located within the R2 Low Density Residential zone and accommodates single storey dwelling house and detached garage. The site slopes toward the southern boundary with an approximate fall of 4 metres. The site accommodates well kept lawned areas and small to medium trees. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by low density residential living.

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	See detailed assessment under "DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS" below.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans and further engineering detail. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the significant 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 Matters for Consideration	Comments
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

Draft Northern Beaches Local Environmental Plan (Draft LEP)

Definition(s): Dual Occupancy (attached)

Land Use Zone: R2 Low Density Residential

Permissible or Prohibited: Permissible

Additional Permitted used for particular land – Refer to Schedule 1: Not applicable

A detailed assessment against the proposed numerical provisions and development standards has not been undertaken as part of this report. However, broad consideration has been given to the Draft LEP, and the proposal is consistent with its relevant aims and objectives.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 19/08/2026 to 02/09/2026 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:
Prof Graeme Stuart Cooper Ms Alexandra Mills iObject	8 / 20 - 22 Fairlight Street FAIRLIGHT NSW 2094

The following issues were raised in the submissions:

- ***Setbacks***

  The submissions raised concerns that the development proposes significant breaches to the front and rear setback controls. In addition, the submission suggests an increased eastern setback to achieve a well balanced development.

  Comment:

  The subject site is a corner allotment with frontages to Grandview Parade and Orana Road. For the purposes of this assessment, Grandview Parade is identified as the primary street frontage and Orana Road as the secondary street frontage. The southern and eastern boundaries are therefore considered side boundaries.

  While concerns were raised regarding apparent non-compliances with the front and rear setback controls, the application has been amended to provide acceptable setbacks to the Orana Road and eastern boundaries. The resulting building setbacks are generally consistent with the prevailing pattern of development within the locality and maintain appropriate separation from adjoining properties.

  In relation to the secondary street frontage, the proposal exhibits only a minor variation to the prescribed building line. The variation is considered acceptable as it does not undermine the objectives of the control, retains a satisfactory streetscape presentation, and is compatible with the established character of surrounding development.

  The submitter's suggestion for an increased eastern setback has been considered. However, the proposed setback is considered adequate to maintain appropriate amenity outcomes, including building separation, outlook and privacy, and is consistent with comparable development in the surrounding area.

  Accordingly, the proposed setbacks are acceptable on merit and do not warrant refusal of the application.

- ***Privacy***

  The submissions raised concerns that the proposal would result in unacceptable privacy impacts due to overlooking of adjoining properties.

  Comment:

  A detailed assessment of visual privacy is provided under Clause C1.5 elsewhere in this report. In summary, the proposal has been amended to incorporate appropriate privacy measures that minimise unreasonable overlooking and maintain acceptable amenity outcomes

for adjoining properties.

Accordingly, this matter does not warrant refusal of the application.

- ***Bulk and Scale***

  The submissions raised concerns that the proposal's bulk and scale are excessive and do not appropriately respond to the prevailing local character or the objectives of the relevant planning controls.

  Comment:

  The proposal has been amended to achieve compliance with the maximum building height control and general compliance with the relevant built form controls, including setbacks, building envelope and landscaped area requirements. On balance, the amended proposal demonstrates an acceptable bulk and scale for an attached dual occupancy, having regard to the site's constraints, including its narrow width, corner lot configuration and flood affected nature. The proposal is considered compatible with the desired character of the locality and the objectives of the relevant planning controls.

  Accordingly, this matter does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	***Referral completed - conditions recommended*** Landscape Referral raise no concerns with the proposed development as described in reports and as illustrated on plans, subject to conditions. It is noted that the proposed works include a second driveway into the Lot and this matter shall be determined by the relevant Council referral team. Should the second crossover and driveway as documented be approved, the existing vegetation as shown for removal is unable to be retained. Nonetheless it is considered that such vegetation as grown and managed is classified as a hedge and may be removed under the exempt provisions of the Pittwater DCP. A Landscape Plan is submitted indicating existing vegetation to be removed comprising the hedge as noted above, and retention of trees within the property. All existing trees as shown on the Landscape Plan within the road reserve verge shall be retained. The Landscape Plan additionally provides for enhancement of the landscape setting as documented as this satisfies the landscape objectives of Pittwater DCP controls C1.1 Landscaping and D9 Mona Vale Locality.

Internal Referral Body	Comments
NECC (Development Engineering)	***Referral completed - conditions recommended*** The proposal includes the demolition of an existing garage and construction of a dwelling and two garages and the subdivision of the existing lot into two lots. A review of Council's stormwater maps indicates that there is an existing Council stormwater pipeline that traverses adjacent to the eastern boundary of the site. As the proposal includes works along the eastern boundary that may impact this line, the pipeline must be accurately located and shown on the architectural plans in accordance with section 6.7 of Council's Water Management for Development Policy. The submitted stormwater plan is in accordance with Council's policy and is acceptable. The proposal indicates the construction of two new vehicle crossings and an existing crossing to remain. In accordance with Council's Driveway Access Guidelines, one two crossing are permitted for the site. In this regard, the design is to be amended to include a maximum of two driveway crossings. Either the existing crossing to the existing dwelling is to be deleted or the proposed crossings to the new garages are to be combined into a single crossing 3 metres wide at the kerb to 4 metres wide at the boundary. Where a combined driveway is to be provided for the two new garages, a right of way must be provided over the portion of the driveway within the proposed lots required to access the proposed garages. The subdivision plan is to be amended to suit. The proposal requires additional information in for stormwater assets and access in accordance with clauses B5 and B6 of the DCP. **Amended plans and report submitted 4/09/2026** The applicant has provided amended plans to relocate the retaining wall away from the boundary and have located the Council pipe as requested. The driveway crossings have also been altered in accordance with Council's requirements. Conditions for the required right of way have been included. The proposal meets the objectives of the DCP controls, subject to conditions as recommended.

Internal Referral Body	Comments
NECC (Flooding)	***Referral completed - conditions recommended*** This development is for Demolition works and construction of a dual occupancy. The proposal is assessed against Section B3.11 of the Pittwater DCP and Clause 5.21 of the Pittwater LEP The relevant flood characteristic are as follow: Flood Planning Level: 16.79 - 20.77mAHD 1% AEP Maximum Water Level: 16.29 - 20.27mAHD 1% AEP Hydraulic Category: Floodway / Flood Fringe Probable Maximum Flood (PMF) Level: 20.6mAHD PMF Life Hazard Category: H2-H1 Subject to the following conditions, the proposal complies with Section B3.11 of the Pittwater DCP and Clause 5.21 of the Pittwater LEP.
NECC (Water Management)	***Referral completed - conditions recommended*** The Catchment Team has reviewed the proposal and raises no objection from an integrated stormwater management perspective.

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td>Strategic and Place Planning (Heritage Officer)</td><td>
Referral completed - conditions recommended
<table>
<tr><td>HERITAGE COMMENTS</td></tr>
<tr><td>Discussion of reason for referral</td></tr>
<tr><td>This application has been referred to Heritage as the subject site is within the vicinity of two heritage items, being;
2270025- House - 26 Grandview Parade, Mona Vale.
2270024 - House - 16 Orana Road, Mona Vale.</td></tr>
<tr><td>Details of heritage items affected</td></tr>
<tr><td>2270025- House
<u>Statement of Significance</u>
The House at 26 Grandview Parade, Mona Vale has historic and aesthetic significance as a good example of an Inter-War Californian Bungalow of the early Pittwater subdivisions. It features characteristic elements of the Californian Bungalow house style including the large, low pitched roof planes, deep shady veranda, wide eaves with exposed rafters, a prominent gable verge, brick veranda pier supporting by plain timber posts and simple wide barge boards. This house is culturally significant as it is associated with early real estate development in the Mona Vale locality.
<u>Physical Description</u>
One storey pitched rood house built in the Inter-War Californian Bungalow style.
2270024 - House
<u>Statement of Significance</u>
The House at 16 Orana Road, Mona Vale, built in the 1920s has historic and aesthetic significance as a good example of a Californian Bungalow House typical of the early Pittwater subdivisions. It features characteristic elements of the Californian Bungalow House style including large, low pitched roof planes, deeply shaded veranda, wide eaves with exposed rafters, a prominent gable verge, awning like roof, masonry veranda piers, simple wide barge boards and leadlight glazing. The house is associated with the early development of Pittwater.
<u>Physical Description</u>
The house comprises of large and spacious interiors, a stone fireplace, large bay windows and traditional features which give the house a significant Californian bungalow character.</td></tr>
<tr><td>Other relevant heritage listings</td></tr>
<tr><td>
<table>
<tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
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Internal Referral Body	Comments
	Other: No Consideration of Application This proposal is for demolition works and the construction of a new dwelling to create an attached dual occupancy. The proposed demolition works involve the removal of the existing single detached garage located to the south of the existing dwelling. The proposed two storey dwelling will be located in the southern section of the site and will adjoin the rear of the existing dwelling. The subject site is within the vicinity of two heritage listed Inter-War California Bungalow houses. The subject dwelling is not a heritage item, however it appears to be an Inter-War dwelling which displays characteristics of the Spanish Mission style. The subject dwelling and detached garage appear in historical aerial imagery of the site dating from 1955. Heritage raises no concerns regarding the construction of a new two-storey dwelling at the rear of the site. The proposed two-storey dwelling displays a modest bulk, scale, form and design which will have a neutral impact to the heritage listed house in Orana Street. The potential impact of the new dwelling to the heritage listed house on Grandview Parade is considered minimal. Heritage is supportive of the retention of the existing dwelling. The detached single garage located at the rear of the site likely dates from the same construction period as the subject dwelling. Heritage can support its demolition subject to a simple photographic archival recording of the site prior to the commencement of any construction works. Therefore Heritage can support this proposal, subject to one condition. Consider against the provisions of CL5.10 of PLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No

External Referral Body	Comments
External - Ausgrid - Section 4.31 of SEPP (Planning Systems) 2021 Development near electricity infrastructure - s4.31 (of SEPP) 2021	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions

contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

Housing and Productivity Contribution

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

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

Region	HPC class of development	Amount	HPC unit
Greater Sydney	Residential subdivision	$12,000	new dwelling lot
	Medium or high-density residential development	$10,000	new dwelling
	Commercial development	$30	square metre of new GFA
	Industrial development	$15	square metre of new GFA

Comment:
The subject site is sited within the Greater Sydney region. The proposed development involves the construction of a two-storey dwelling with a double garage that will form as dual occupancy (attached) development with the existing dwelling house. The proposal is considered medium-density residential development, which, introduces one (1) additional dwelling on Site. As such, the contribution is $10,000.00.

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1842658S_02 dated 11 September 2026).

Where relevant, the embodied emissions have been quantified in the above BASIX Certificate.

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.

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	Complies
Height of Buildings:	8.5m	7.9m	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.1B Minimum lot sizes for dual occupancies	Yes

Clause	Compliance with Requirements
4.2A Minimum subdivision lot size for strata plan schemes in certain rural, residential and conservation zones	No
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

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

Development standard: Clause 4.2A Minimum Subdivision Lot Size for Strata plan schemes in certain rural, residential and conservation zones
Requirement: 700m^2
Proposed: Lot 1 - 565.6m^2; Lot 2 - 400.5m^2
Percentage of variation: Lot 1 - 19.2%; Lot 2 - 42.78%

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 4.2A 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 4.2A is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- The proposal achieves the objective of the development standard, notwithstanding the numerical non-compliance, which is to ensure that land is not fragmented by subdivisions that would create additional dwelling entitlements.
- The proposed development of the land is not being fragmented by Torrens title subdivision and the lot and low-density pattern of subdivision in the area is not being undermined.
- Attached dual occupancies are a permissible land use in the R2 Low Density Residential zone.
- The proposed site meets the minimum lot size of 800m^2 for dual occupancies, which does not marry with the minimum subdivision lot size of 700m^2.

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

Comment:

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

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

The Clause 4.6 Request (BBF Town Planner, Page 7) argues, in part:

- *The size of the resulting lots is sufficient to provide high levels of amenity, including generous private open space, adequate building setbacks, and functional layouts. The development is*

consistent with the existing neighbourhood character and does not result in an overdevelopment of the site.

- *The subject site is approximately 300m from the Low and Mid Rise mapped area as it relates to the Housing SEPP. In this regard, the dual occupancy proposed on the subject site is more sensitive to the R2 low density zone given its larger resultant lot sizes and strata subdivision compared to what could be achieved within the LMR zone for a similar dual occupancy development. The close proximity to the LMR zone makes the proposed variation more compatible with the desired future character of the locality.*
- *The strata lot sizes still achieve dwellings that are of reasonable amenity for the occupants with regard to internal amenity, private open space, landscape area, privacy and access despite the variation to lot size.*
- *The variation does not undermine the objectives of the R2 low density zone which anticipates dual occupancies on land greater than 800m².*

It is agreed that attached dual occupancy developments are permissible in the zone and the land meets the minimum lot size for dual occupancy development under clause 4.1B, with the proposed strata subdivision not fragmenting the land to create additional dwelling entitlements, or altering the existing pattern of subdivision in the area.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.2A for the following reasons:

The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(g), (j) and (k) 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, that the proposed dual occupancy development is a permissible use on land that complies with the minimum lot size for dual occupancies and that the land will not be fragmented as a result of strata subdivision, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

5.10 Heritage conservation

Subclause (4) requires that:

(4) Effect of proposed development on heritage significance
The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted

under subclause (6).

A detailed assessment is carried out later in this report under the Heritage Referral comments by Council's Heritage Advisor. The application has been considered given it is within the vicinity of two heritage items. The subject land is not within a heritage conservation area or a heritage item.

The heritage officer concludes that the building design displays a modest bulk, scale, form and design which will have minimal impact on the nearby items.Therefore, it is considered that the application satisfies the requirements of the LEP.

5.21 Flood planning

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

(a) is compatible with the flood function and behaviour on the land, and
(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and
(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and
(d) incorporates appropriate measures to manage risk to life in the event of a flood, and
(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

Comment:
Council's Flooding officer has reviewed the amended proposal and is satisfied that the development subject to conditions suitably addresses matters (a) to (e).

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

(a) the impact of the development on projected changes to flood behaviour as a result of climate change,
(b) the intended design and scale of buildings resulting from the development,
(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,
(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.

Comment:
Council's Flooding officer has reviewed the amended proposal and is satisfied that the development subject to conditions suitably addresses matters (a) to (d).

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m (Grandview Parade)	6.5m (Existing)	N/A	N/A
Secondary front building line	3.25m (Orana Road)	3.0m (Dwelling)	7.7%	**No**

Side building line	2.5m - South	8.8m (Deck)	N/A	Yes
	1.0m - East	1.0m (Garage)	N/A	Yes
Building envelope	3.5m - South	Within envelope	N/A	Yes
	3.5m - East	Within envelope	N/A	Yes
Landscaped area	50%	48.1% (464.6sqm)	3.8%	**No**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	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
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
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
C1.8 Dual Occupancy Specific Controls	No	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	No	Yes
D9.7 Side and rear building line	Yes	Yes
D9.9 Building envelope	Yes	Yes
D9.10 Landscaped Area - General	No	Yes
D9.12 Fences - General	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

C1.4 Solar Access

Compliance with control

The control stipulates that a minimum of 50% of the required area of private open space of adjacent dwellings must receive at least 3 hours of sunlight between 9am and 3pm on June 21. In addition, windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).

The submitted diagrams illustrate the projected shadows from the proposed development on the site and neighboring properties, confirming that the private open space and living area windows of adjacent dwellings receive the required minimum of 3 hours of sunlight between 9am and 3pm on June 21.

C1.5 Visual Privacy

Concerns have been raised regarding the proposal, particularly its potential for unacceptable privacy impacts.

Specifically, there is concern from the adjoining properties regarding the proposed stairway window and alfresco/deck area.

The assessment below outlines the nature and impacts of the proposal.

Merit consideration

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*
- *A sense of territory and safety is provided for residents.*

  Comment:
  The proposed first-floor stairway window is setback 2.8 metres from the eastern side boundary and is not expected to result in unreasonable overlooking impacts, given its transient nature and limited use.

  In relation to the alfresco/deck area, it is elevated approximately 1.3 metres above ground level and directly accessed from the main internal living areas. As such, it is anticipated to accommodate a relatively high level of use and has the potential to generate overlooking opportunities. The objective of the control is therefore to minimise the potential for objectionable overlooking from such spaces. Notwithstanding this, the deck is oriented towards the southern side boundary, with a minimum setback of 8.8 metres, and maintains a setback of 6.1 metres from the eastern side boundary. The separation distances, orientation of the deck and removal of the eastern ensuite window are considered sufficient to avoid unreasonable overlooking impacts

All other windows and openings are considered acceptable and are not expected to result in adverse privacy impacts. Accordingly, no additional privacy measures are considered necessary.

Having regard to the above assessment, it is considered that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C1.8 Dual Occupancy Specific Controls

Description of non-compliance

The control requires the rear dwelling of a dual occupancy to be single storey unless the site is more than 16.5 metres wide. The site has an average width of 15.9 metres.

In addition, second storeys shall cover a maximum of 50% of the ground floor area. The proposed second storey equates to 58.6% (83.3m^2) of the ground floor area.

Comment:

The outcomes of the control are:

- *Limitation of the visual bulk and scale of development. (En, S)*
- *Provision of design flexibility for second storey development.*
- *Restriction of the footprint of development on site. (En)*
- *Retention of the natural vegetation and facilitation of planting of additional landscaping. (En)*
- *Provision of rental accommodation (S)*

The proposal achieves a compliant FSR of 0.35:1, remains well below the maximum building height standard with an overall height of 7.9 metres, and provides appropriate front and side boundary setbacks. The proposal has also been amended to increase landscaped areas across the site, facilitating additional planting and reducing the extent of the building footprint. In addition, the building height has been reduced and eastern-facing windows have been minimised to mitigate opportunities for unreasonable overlooking and overshadowing. Furthermore, the development provides an appropriate response to the secondary frontage through the incorporation of recessed building elements that provide visual relief and articulation.

The development is consistent with the outcomes of the control and is acceptable on merit.

D9.6 Front building line

Description of non-compliance

The control requires a minimum front building line setback of 6.5 metres. Where the intended outcomes of the control are achieved, Council may support a reduced setback to a secondary street frontage of half the required front building line setback. In this instance, this equates to a minimum setback of 3.25 metres to Orana Road.
The proposal provides a minimum setback of 3.0 metres to Orana Road, resulting in a variation of 0.25 metres.

Comment:

The outcomes of the control are:

- *Achieve the desired future character of the Locality.*
- *Equitable preservation of views and vistas to and/or from public/private places. (S)*
- *The amenity of residential development adjoining a main road is maintained. (S)*
- *Vegetation is retained and enhanced to visually reduce the built form. (En)*
- *Vehicle manoeuvring in a forward direction is facilitated. (S)*
- *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.*

Notwithstanding the numerical non-compliance, the variation is minor and is not considered to compromise the streetscape outcome or the objectives of the control, given the development maintains an appropriate relationship with the secondary frontage. The scale and form of the dwelling are consistent with the established character of this section of Orana Road. The development contributes positively to the streetscape through visual articulation and improved site access with the provision of two off-street parking spaces per dwelling. An acceptable level of compliance is achieved with the landscaped area control, with retention of existing streetscape vegetation assisting to soften visual impacts and maintain the established character of the locality.

Accordingly, the proposed setback variation is considered acceptable in the context of the site's unique physical constraints and does not result in any adverse streetscape impacts.

The development is consistent with the outcomes of the control and is acceptable on merit.

D9.10 Landscaped Area - General

Description of non-compliance

The control requires a minimum of 50% of the site area to be landscaped.

The proposal provides 48.1% (464.6m^2)of the site as landscaped area, which represents a variation of 3.8%.

The variations provision of the Control allows for impervious pathways less than 1m in width to be included as part of the landscaped area, as well as up to 6% of the site area provided such is allocated to outdoor recreational purposes. Upon application of such provisions, the landscaped area equates to 54.1%.

Comment:

The outcomes of the control are:

- *Achieve the desired future character of the Locality. (S)*
- *The bulk and scale of the built form is minimised. (En, S)*

- *A reasonable level of amenity and solar access is provided and maintained. (En, S)*
- *Vegetation is retained and enhanced to visually reduce the built form. (En)*
- *Conservation of natural vegetation and biodiversity. (En)*
- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)*
- *To preserve and enhance the rural and bushland character of the area. (En, S)*
- *Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.(En, S)*

The proposal as amended achieves the intended outcomes of the landscaped area control by reinforcing the future character of the locality and preserving its landscaped setting. The bulk and scale of the built form are moderated through retention of vegetation and maximisation of soft landscaped areas, which assist in visually reducing the development and maintaining residential amenity and solar access. Stormwater will be appropriately manged on-site, subject to conditions. Overall, the development preserves and enhances the character of the area while achieving acceptable environmental and visual outcomes.

The development is consistent with the outcomes of the control and is acceptable on merit.

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 $10,862 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,086,170.

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 4.2A Minimum Subdivision Lot Size for Strata plan schemes in certain rural, residential and conservation zones 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 demolition works and construction of a two-storey attached dual occupancy development with two-lot strata subdivision, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the resulting lots presenting variations of greater than 10% to the minimum strata subdivision lot size of 700m^2 under Clause 4.2A of the PLEP.

The concerns raised in the submission received during the public exhibition period has been addressed within this assessment report. The issues raised generally relate to setbacks
privacy, bulk and scale. These matters have been satisfactorily resolved through amendments to the proposal and the imposition of appropriate conditions of consent where necessary.

The assessment concludes that the height, bulk and scale of the development provide an appropriate response to the site and surrounding locality, while maintaining a reasonable level of amenity for adjoining residential properties.

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

The proposal has therefore been recommended for **approval**.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2026/0645 for Alterations and additions to an existing dwelling and construction of a dual occupancy (attached), including strata subdivision on land at Lot 1 DP 6195, 13 Grandview Parade, MONA VALE, 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**
A-2-00	3	Existing House/Extension	Valletta Homes	7 September 2026
A-2-01	3	Site Plan	Valletta Homes	7 September 2026
A-2-02	3	Ground Floor Plan	Valletta Homes	7 September 2026
A-2-03	3	First Floor Plan	Valletta Homes	7 September 2026
A-3-01	3	Elevations E-01, E-02	Valletta Homes	7 September 2026
A-3-02	3	Elevations E-03, E-04	Valletta Homes	7 September 2026
A-3-03	3	Elevations E-05, E-06	Valletta Homes	7 September 2026
A-4-01	3	Sections S-01	Valletta Homes	7 September 2026
-	-	Material & Colour Selections	-	Listed Applicant
1	-	DRAFT PLAN OF SUBDIVISION OF LOT 1 OF SECTION B IN DP 6195	27 August 2026	Anthony William George Clarke

2		DRAFT PLAN OF SUBDIVISION OF LOT 1 OF SECTION B IN DP 6195	27 August 2026	Anthony William George Clarke

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate	1842658S_02	J GUARNACCIA & C SCHIMMELPFENNIG	11 September 2026
Waste Management Plan	-	Valletta Homes	Not dated

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 directly to the Long Service Corporation. 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 $10,861.70 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 $1,086,170.00.

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 $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.

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

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

Contribution Type	Amount
Housing and Productivity Contribution	$10,000
Total:	**$10,000**

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

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

where—

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

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

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

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

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

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

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

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

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

6. Despite condition 1, a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the Environmental Planning and Assessment Act 1979 to the development, or the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2024 exempts the development from the contribution. The amount of the contribution may also be reduced under the order, including if payment is made before 1 July 2025.

Reason: Statutory requirement.

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

Drainage Works
As security against any damage to Council's stormwater drainage infrastructure as part of this consent a bond of $12,000.

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

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. **Building components and structural soundness**
B1 - All new development below the Flood Planning Level of 17.75m AHD shall be designed and constructed from flood compatible materials.

B2 - All new development must be designed to ensure structural integrity up to the Flood Planning Level of 17.75m AHD, taking into account the forces of floodwater, debris load, wave action, buoyancy and immersion.

B3 - All new and existing electrical equipment, power points, wiring and connections must be located above the Flood Planning Level of 17.75m AHD, protected from flood water or have residual current devices installed to cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

9. **Floor levels**
C1 - New floor levels within the development shall be set at or above the Flood Planning Level of 17.75m AHD.

C3 - The underfloor area of the dwelling below the 1% AEP flood level is to be designed to allow clear passage of floodwaters. At least 50% of the perimeter of the underfloor area must be of an open design from the natural ground level up to the 1% AEP flood level.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

10. **Car parking**

D1 - The floor level of the proposed garage shall be set at or above the 1% AEP flood level of 18.54m AHD.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

11. **Fencing**
New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area along any straight length, from the natural ground level up to the 1% AEP flood level. Openings shall be a minimum of 75mm x 75mm.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

12. **Storage of Goods**
Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 17.75m AHD unless adequately protected from floodwaters in accordance with industry standards.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

13. **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 Daly Smith, drawing number 36628E drawings 01 and 02 Revision A , dated 21/04/26. 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:

1. Sections through the OSD tank
2. Step irons adjacent to the grated inlet pits to the OSD tank
3. Orifice detail.

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

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

14. **Vehicle Crossings Application**
The Applicant is to submit an application (using form number 4028 available on Council website) with Council for driveway levels to construct one vehicle crossing 3 metres wide at the kerb to 4 metres wide at the boundary along frontage of site in Orana Road in accordance with Northern Beaches Council's Standard Normal Profile and in accordance with Section 138 of the Roads Act 1993.

Driveways are to be in plain concrete only.

Redundant laybacks along frontage of site in Orana Road are to be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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.

15. **Design and Certification of Structures Located Adjacent to Council Pipeline or Council Easement**
The Applicant shall submit a suitably qualified Structural Engineer's design and certification that the proposed footing works are designed in accordance with Northern Beaches Council's Water Management for Development Policy to ensure no loads are proposed onto Council's stormwater pipeline traversing the adjoining property.

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

Reason: Protection of Council's infrastructure.

16. **Stormwater Treatment Measures - Minor**
The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

17. **Simple Photographic Heritage Recording**
A simple photographic record of the site is to be made of all existing buildings, garages and structures including exteriors and their setting.
This record must be submitted to and approved by Council's Heritage Advisor prior to the issue of the Construction Certificate and commencement of any demolition works or works on site. Details demonstrating compliance are to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide a simple photographic recording of the site prior to the commencement of any works.

18. **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.

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

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

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

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

20. **Pre-Construction Stormwater Assets Dilapidation Report**
The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: https://www.northernbeaches.nsw.gov.au/media/60355?1730767288

The pre-construction / demolition Dilapidation Report must be submitted to Council for approval and the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

21. **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.

22. **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

23. **Structural Adequacy**
Prior to commencement of any works, the Principal Certifier shall be satisfied that those components of the building to be retained and/or altered will be structurally sound and able to withstand the excavation and demolition process.

Evidence from a qualified practising structural engineer, demonstrating compliance with the above and detailing, where relevant, means of support for those parts of the retained building shall be provided to the Principal Certifier.

Reason: To ensure that the development can be undertaken in accordance with accepted construction practices as indicated on the endorsed development plans, without the need for modification of the Development Consent.

24. **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

25. **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 trees fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2025 Protection of trees on development sites. As a minimum the tree protection fencing for street trees 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.

26. **Tree and vegetation protection**

a) Existing trees and vegetation shall be retained and protected, including:
i) all prescribed trees within the site, or otherwise existing trees nominated for retention on the approved plans including landscape 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 AS4970-2025 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 of AS4970-2025 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 complaint to AS4970-2025 Protection of trees on development sites.

Reason: Tree and vegetation protection.

27. **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.

28. **Handling of asbestos during demolition**
While demolition work is being carried out, any work involving the removal of asbestos must comply with the following requirements:

- Only an asbestos removal contractor who holds the required class of Asbestos Licence issued by SafeWork NSW must carry out the removal, handling and disposal of any asbestos material;
- Asbestos waste in any form must be disposed of at a waste facility licensed by the NSW Environment Protection Authority to accept asbestos waste; and
- Any asbestos waste load over 100kg (including asbestos contaminated soil) or 10m² or more of asbestos sheeting must be registered with the EPA online reporting tool WasteLocate.

Reason: To ensure that the removal of asbestos is undertaken safely and professionally.

29. **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.

30. **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.

31. **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.

32. **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

33. **Landscape completion**

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

a) landscape works are to be contained within the legal property boundaries

b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans, unless otherwise imposed by conditions,

c) all tree planting shall be a minimum pre-ordered planting size of 75 litres; meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn

d) mass planting shall be in garden beds 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.

34. **Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans including Landscape Plans, including the following information:

a) compliance to any Arborist recommendations for tree protection generally and during excavation works,

b) extent of damage sustained by vegetation as a result of the construction works,

c) any subsequent remedial works required to ensure the long-term retention of the vegetation.

Reason: Tree and vegetation protection.

35. **Certification of Works as Executed**

A suitably qualified engineer and/or registered surveyor is to certify that the completed works have been constructed in accordance with this consent and the approved plans with respect to the following:

1. Floor levels for ground floor, shelter in place refuge and garage are set at or above the required level
2. All access, ventilation, driveway crests and any other potential water entry points to the garages have been set at or above the required level
3. There has been no filling on the land other than what has been approved
4. Openings are provided under floor areas where required for the free passage of flood waters
5. Openings are provided in fencing where required for the free passage of flood waters

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

36. **Building Components and Structural Soundness**
B2 - A suitably qualified structural engineer is to certify the structural integrity of the new development up to the Flood Planning Level of 17.75m AHD (Proposed Dwelling) and 18.54mAHD (Proposed Garage). The depth, velocity, debris load, wave action, buoyancy and immersion must all be considered.

B3 - A suitably qualified electrician or contractor is to certify that all new and existing electrical equipment, power points, wiring and connections are located above the Flood Planning Level of 17.75m AHD (Proposed Dwelling) and 18.54mAHD (Proposed Garage), are protected from flood water or have residual current devices installed to cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

37. **Post- Construction Stormwater Assets Dilapidation Report (Council stormwater assets)**
The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at: https://www.northernbeaches.nsw.gov.au/media/60355?1730767288

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

38. **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.

39. **Waste Disposal Verification Statement**
On completion of demolition work:

- a signed statement must be submitted to the Certifier verifying that demolition work, and any recycling of materials, was undertaken in accordance with the waste management plan approved under this consent, and
- if the demolition work involved the removal of asbestos, an asbestos clearance certificate issued by a suitably qualified person, must be submitted to the Certifier within 14 days of completion of the demolition work.

Reason: To provide for the submission of a statement verifying that demolition waste management and recycling has been undertaken in accordance with the approved waste management plan.

40. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**
The Applicant shall submit a suitably qualified Structural Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Water Management for Development Policy and the approved Construction Certificate plans. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure

41. **House / Building Numbers**
House/building numbers are to be affixed to the buildings to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

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

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

Reason: To maintain local environmental amenity.

43. **Maintenance of Stormwater Treatment Measures - Minor**
Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

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

Reason: Protection of the receiving environment.

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

44. **Easement Creation**
The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statuatory requirements of the Conveyancing Act 1919.

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

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

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

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

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

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

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

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

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

48. **Restriction as to User (On-site Stormwater Detention)**
The Applicant shall create a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument for the

on-site stormwater detention system, restricting any alteration or additions to the system. The terms of such restriction are to be prepared to Council's standard requirements. Council shall be nominated as the party to release, vary or modify such restriction.

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

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

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

Reason: To ensure the On-site Detention System has been built to the appropriate standard.

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

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

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

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

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

Reason: Statutory requirement of the Conveyancing Act 1919.

52. **Title Encumbrances**
The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are

to be created on the title naming Council as the sole authority empowered to release or modify.

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

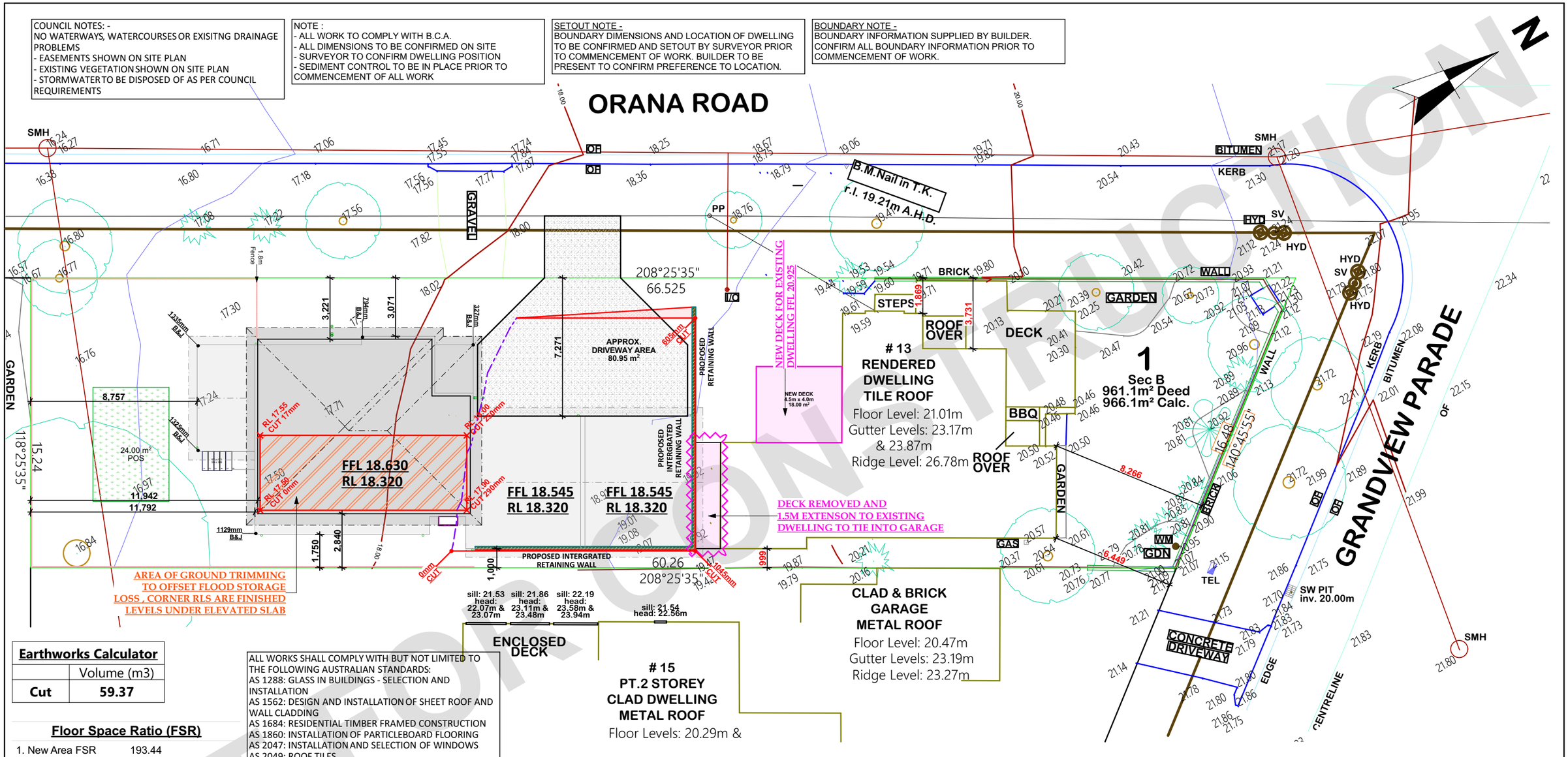
Reason: To ensure proper management of land.

COUNCIL NOTES: -
NO WATERWAYS, WATERCOURSES OR EXISITNG DRAINAGE PROBLEMS
- EASEMENTS SHOWN ON SITE PLAN
- EXISTING VEGETATION SHOWN ON SITE PLAN
- STORMWATER TO BE DISPOSED OF AS PER COUNCIL REQUIREMENTS

NOTE :
- ALL WORK TO COMPLY WITH B.C.A.
- ALL DIMENSIONS TO BE CONFIRMED ON SITE
- SURVEYOR TO CONFIRM DWELLING POSITION
- SEDIMENT CONTROL TO BE IN PLACE PRIOR TO COMMENCEMENT OF ALL WORK

SETOUT NOTE -
BOUNDARY DIMENSIONS AND LOCATION OF DWELLING TO BE CONFIRMED AND SETOUT BY SURVEYOR PRIOR TO COMMENCEMENT OF WORK. BUILDER TO BE PRESENT TO CONFIRM PREFERENCE TO LOCATION.

BOUNDARY NOTE -
BOUNDARY INFORMATION SUPPLIED BY BUILDER. CONFIRM ALL BOUNDARY INFORMATION PRIOR TO COMMENCEMENT OF WORK.



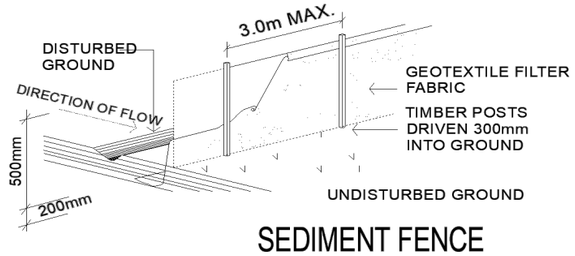
Earthworks Calculator	
	Volume (m3)
Cut	59.37

Floor Space Ratio (FSR)	
1. New Area FSR	193.44
2. Existing Area FSR	141.33
3. Total Area FSR	334.77

Site Area's	
1. Landscaped Front Area	312.10
2. Landscaped Rear Area	178.06
3. Landscaped Total Area	490.16
Site Coverage	333.67

ALL WORKS SHALL COMPLY WITH BUT NOT LIMITED TO THE FOLLOWING AUSTRALIAN STANDARDS:
AS 1288: GLASS IN BUILDINGS - SELECTION AND INSTALLATION
AS 1562: DESIGN AND INSTALLATION OF SHEET ROOF AND WALL CLADDING
AS 1684: RESIDENTIAL TIMBER FRAMED CONSTRUCTION
AS 1860: INSTALLATION OF PARTICLEBOARD FLOORING
AS 2047: INSTALLATION AND SELECTION OF WINDOWS
AS 2049: ROOF TILES
AS 2050: INSTALLATION OF ROOF TILES
AS 2870: RESIDENTIAL SLABS AND FOOTINGS
AS 2904: DAMP PROOF COURSES AND FLASHINGS
AS 3500: PLUMBING AND DRAINAGE
AS 3600: CONCRETE STRUCTURES
AS 3660: TERMITE MANAGEMENT
AS 3700: MASONRY STRUCTURES
AS 3740: WATERPROOFING OF WET AREAS WITHIN RESIDENTIAL BUILDINGS
AS 3959: CONSTRUCTION OF BUILDINGS IN BUSHFIRE-PRONE AREAS
AS 3786: SMOKE ALARMS
AS 4055: WIND LOADS FOR HOUSING
AS 4100: STEEL STRUCTURES
NOTE: ALL PROPRIETARY ITEMS, PRODUCTS & SYSTEMS SHALL BE INSTALLED IN ACCORDANCE WITH MANUFACTURERS SPECIFICATIONS

SEDIMENT CONTROL NOTES -
1. ALL EROSION AND SEDIMENTATION CONTROL MEASURES, INCLUDING REVEGETATION AND STORAGE OF SOIL AND TOPSOIL, SHALL BE IMPLEMENTED TO THE STANDARDS OF SOIL CONSERVATION OF NSW.
2. ALL DRAINAGE WORKS SHALL BE CONSTRUCTED AND STABILISED AS EARLY AS POSSIBLE DURING DEVELOPMENT.
3. SEDIMENT TRAPS SHALL BE CONSTRUCTED AROUND ALL INLET PITS, CONSISTING OF 300mm WIDE x 300MM DEEP TRENCHS.
4. ALL SEDIMENT BASINS AND TRAPS SHALL BE CLEANED WHEN THE STRUCTURES ARE 60% FULL OF SOIL MATERIALS, INCLUDING THE MAINTENANCE PERIOD.
5. ALL DISTURBED AREAS SHALL BE REVEGTATED AS SOON AS THE RELEVANT WORKS ARE COMPLETED.
6. SOIL AND TOPSOIL STOCKPILES SHALL BE LOCATED AWAY FROM DRAIGNAGE LINES AND AREA WHERE WATER MAY CONCENTRATE.
7. FILTER SHALL BE CONSTRUCTED BY A FILTER FABRIC (PROPEX OR APPROVED EQUIVALENT BETWEEN POST AT 3.0m CENTRES/ FABRIC SHALL BE BURIED 150mm ALONG ITS LOWER EDGE)



SEDIMENT FENCE
N.T.S

ALL BUILDING WORKS SHALL BE CARRIED OUT IN ACCORDANCE WITH THE BUILDING DESIGN CODE OF AUSTRALIA. PROVIDE DOWN PIPES IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA & AS2180 / AS2179.1 METAL RAINWATER GOODS. PROVDE LIFT OFF HINGES TO W.C DOORS IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA. PROVIDE WATERPROOFING SYSTEM TO ALL WET AREAS IN ACCORDANCE WITH CLAUSE 10.2 OF THE NCC & AS3740. PROVIDE TERMITE PROTECTION IN ACCORDANCE WITH AS3660.1. INSULATION MUST BE INSTALLED IN ACCORDANCE WITH PART 13.2 OF THE NATIONAL CONSTRUCTION CODE. INSULATION TO BE INSTALLED AS PER RELEVANT AUSTRALIAN STANDARDS. ALL LEVELS ARE INDICATIVE ONLY AND SHOULD BE CONFIRMED ON SITE.

No	PLAN	Issue	DATE
1	WORKING DRAWINGS	C	22.04.2026
2	DEMOLITION PLAN	A	30.04.2026
3	AMENDMENTS	K	07.09.2026
4	...	...	...
5	...	...	...

SITE SPECIFIC INFORMATION :

VALLETTA HOMES

Valletta Homes
Unit 12/40 Karalta Road,
Erina, NSW 2250
p. 02 4326 0808
w. www.vallettahomes.com.au
Office Hours.
Monday - Friday :
8am - 4pm

LAND ZONING	R2
BAL RATING	N/A
FLOOD MIN FFL	Yes - TBC
ACID SULFATE CLASS	5
MINES SUB GUIDELINE	N/A
SLAB CLASS	TBC
WIND CLASS	TBC

CLIENT
Taylor Mick

COUNCIL
Northern Beaches (Pittwater)

DESIGNED BY
Travis A Carbajal
(Senior Draftman / Home Designer)

Unit 12/40 Karalta Road,
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p. 02 4326 0808
e. Travis@vallettahomes.com.au

DETAILS
Proposed Dual Occ Subdivdison
Lot 1 /-/ DP6195, 13 Grandview Parade, Mona Vale, NSW.

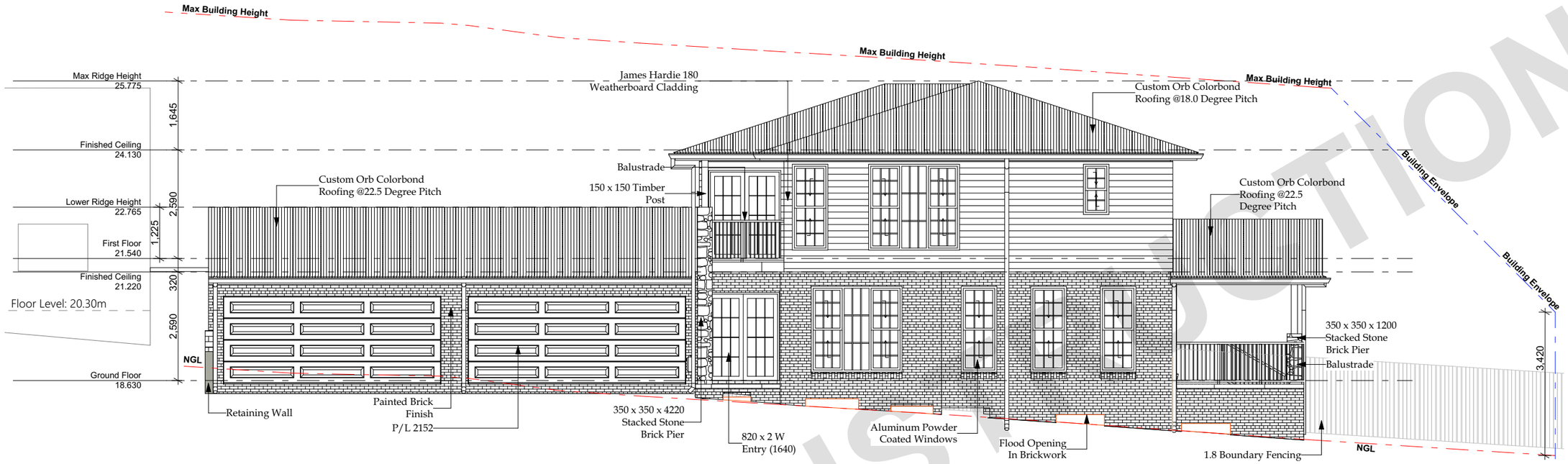
BASIX CERT. No. 1842658S_02

PLAN Custom

TITLE **Site Plan / Site Analysis**

SCALE	1:200, 1:1
PAGE SIZE	A3
Job no.	6010
PAGE	A – 2 – 01
BUILDERS CHECK	

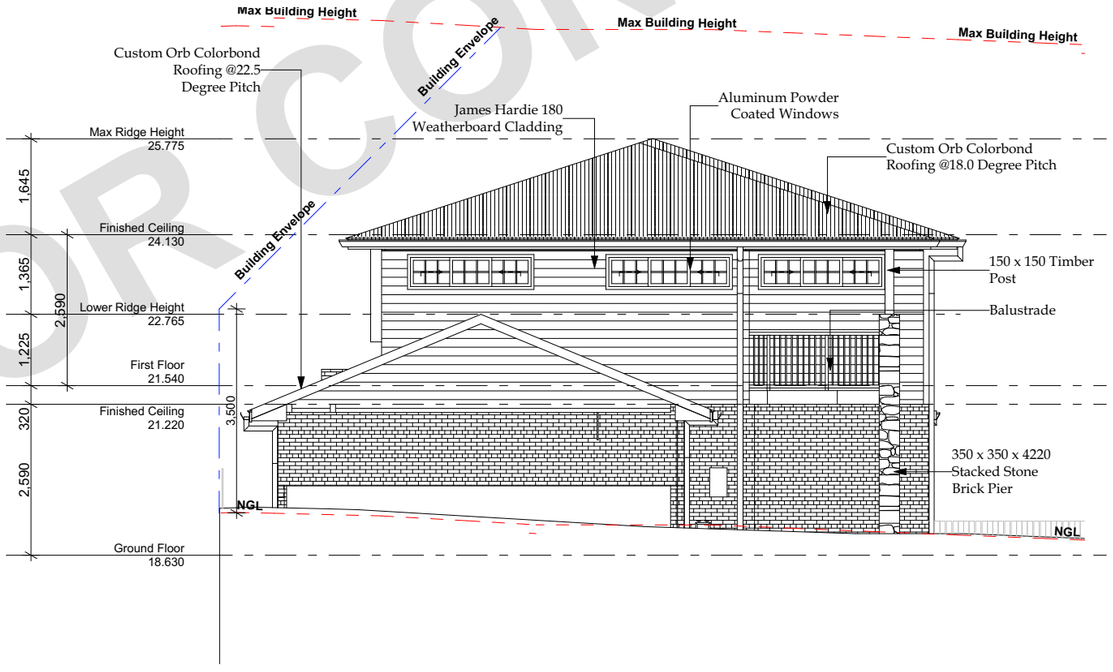
NOT FOR CONSTRUCTION



E-01 Front Elevation 1:100

BEARERS AND JOIST TO DWELLING .
GARAGES TO REMAIN SLAB ON GROUND.

FLOOD OPENINGS IN SUBFLOOR AS MARKED ON SUB FLOOR PLANS.



E-02 Left Elevation 1:100

NOT FOR CONSTRUCTION

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1	WORKING DRAWINGS	C	22.04.2026
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LAND ZONING **R2**

CLIENT
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COUNCIL
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BAL RATING **N/A**

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FLOOD MIN FFL **Yes - TBC**

ACID SULFATE CLASS **5**

DETAILS

Proposed Dual Occ
Subdivdison
Lot 1 /-/ DP6195, 13 Grandview Parade, Mona Vale, NSW.

MINES SUB GUIDELINE **N/A**

SLAB CLASS **TBC**

WIND CLASS **TBC**

BASIX CERT. No. 1842658S_02

PLAN Custom

TITLE **Elevations E-01, E-02**

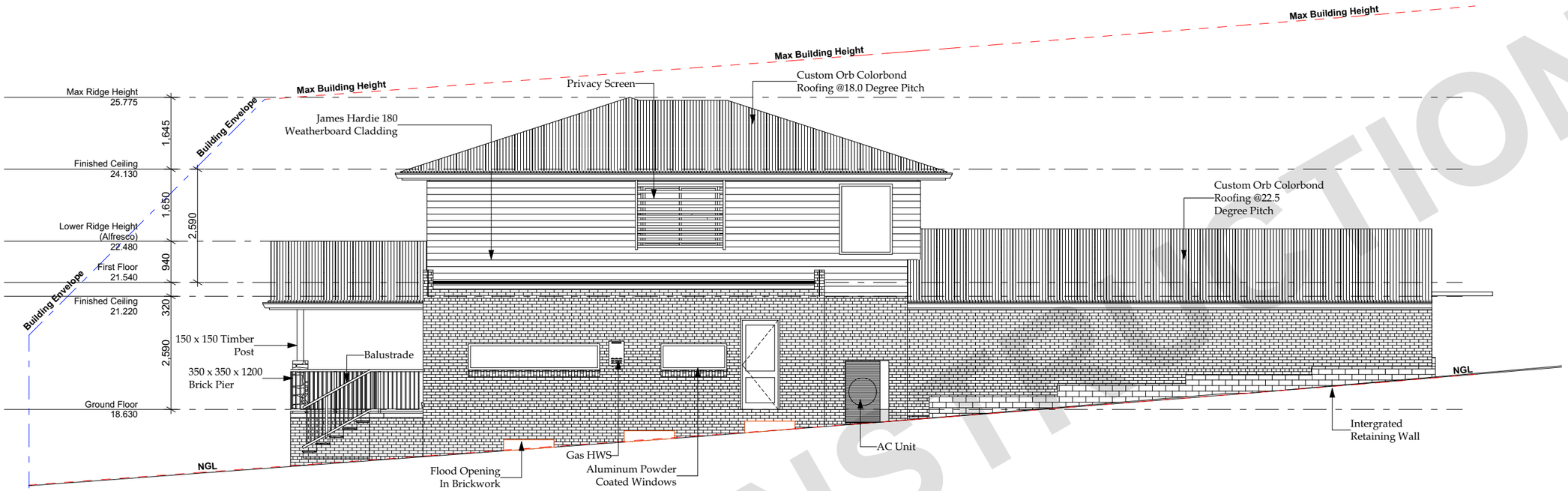
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PAGE SIZE **A3**

Job no. **6010**

PAGE A – 3 – 01

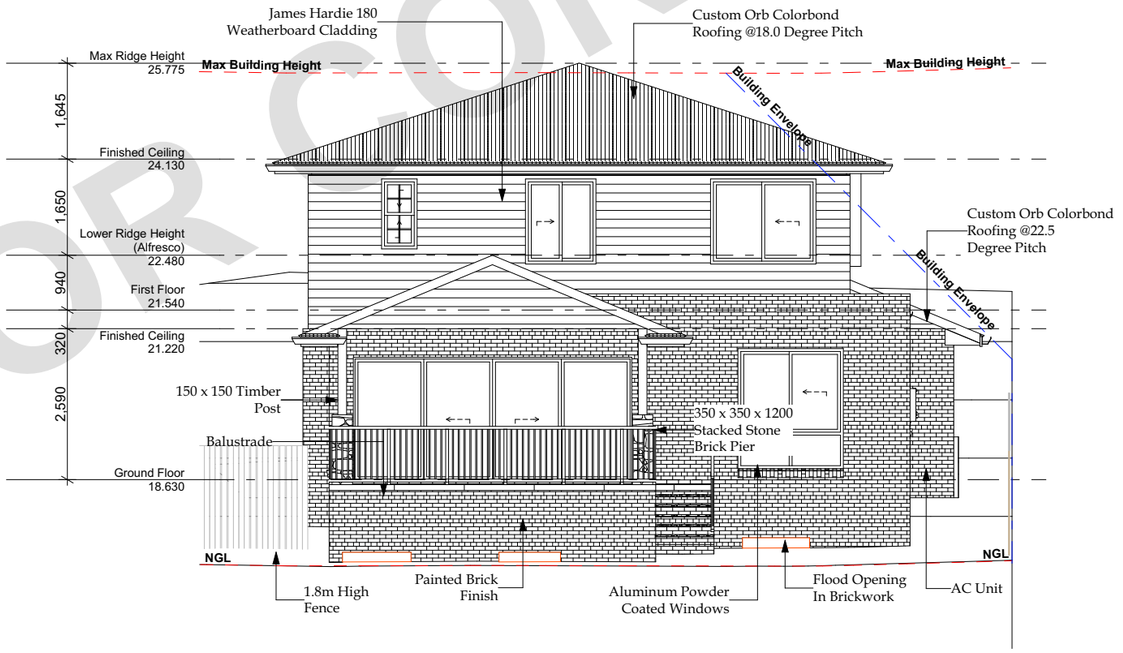
BUILDERS CHECK



E-03 Rear Elevation 1:100

BEARERS AND JOIST TO DWELLING .
GARAGES TO REMAIN SLAB ON GROUND.

FLOOD OPENINGS IN SUBFLOOR AS MARKED ON SUB FLOOR PLANS.



E-04 Right Elevation 1:100

NOT FOR CONSTRUCTION

No	PLAN	Issue	DATE
1	WORKING DRAWINGS	C	22.04.2026
2	DEMOLITION PLAN	A	30.04.2026
3	AMENDMENTS	K	07.09.2026
4	...	...	...
5	...	...	...

SITE SPECIFIC INFORMATION :

LAND ZONING	R2	BAL RATING	N/A	FLOOD MIN FFL	Yes - TBC	ACID SULFATE CLASS	5	MINES SUB GUIDELINE	N/A	SLAB CLASS	TBC	WIND CLASS	TBC

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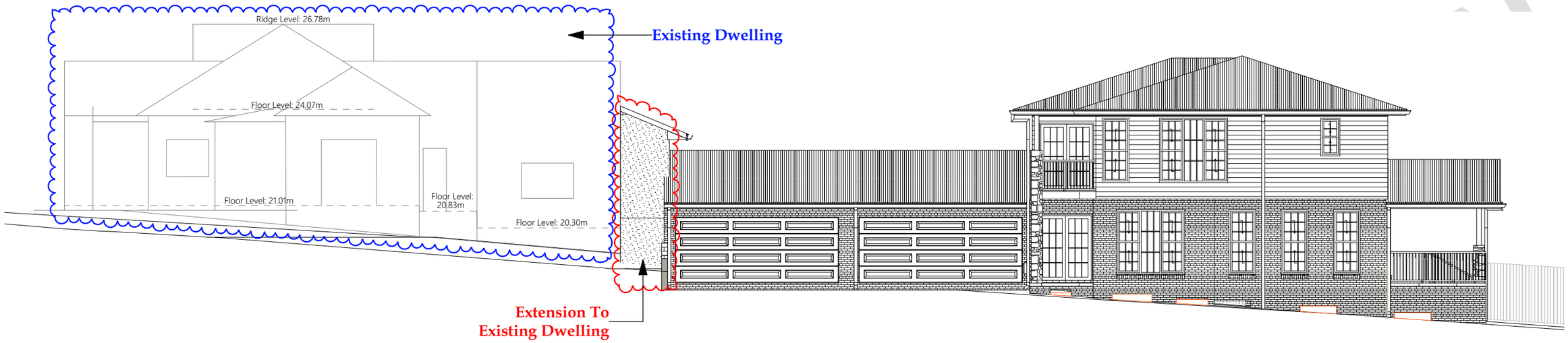
COUNCIL
Northern Beaches (Pittwater)

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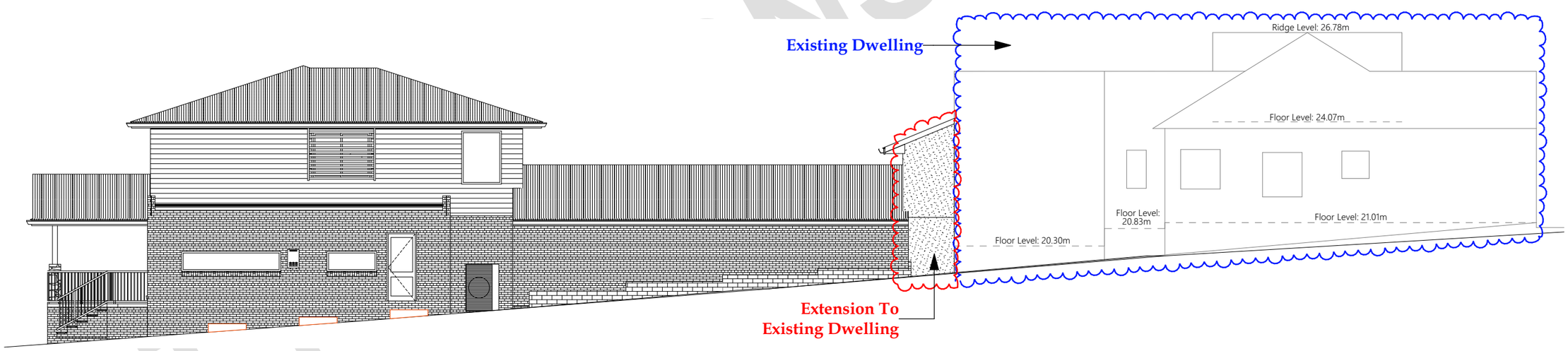
DETAILS
Proposed Dual Occ Subdivdison
Lot 1 /-/ DP6195, 13 Grandview Parade, Mona Vale, NSW.

BASIX CERT. No. 1842658S_02
PLAN Custom
TITLE **Elevations E-03, E-04**

SCALE 1:100
PAGE SIZE A3
Job no. **6010**
PAGE A – 3 – 02
BUILDERS CHECK



E-01 Front Elevation - Extension 1:125



E-03 Rear Elevation - Extension 1:125

NOT FOR CONSTRUCTION

No	PLAN	Issue	DATE
1	WORKING DRAWINGS	C	22.04.2026
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LAND ZONING	R2
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ACID SULFATE CLASS	5
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BASIX CERT. No. 1842658S_02
PLAN Custom
TITLE **Elevations E-05, E-06 (Extension)**

SCALE 1:125
PAGE SIZE A3
Job no. **6010**
PAGE A – 3 – 03
BUILDERS CHECK

THE STRATUM OF THE COURTYARDS IS LIMITED TO
A DEPTH OF 2 BELOW AND A HEIGHT OF 10 ABOVE
THE UPPER SURFACE OF THE CONCRETE FLOOR OF THEIR
RESPECTIVE GARAGE, EXCEPT WHERE COVERED WITHIN THESE LIMITS.

THE STRATUM OF THE PATIOS ARE LIMITED TO
A HEIGHT OF 10 ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE
CONCRETE FLOOR, EXCEPT WHERE COVERED WITHIN THESE LIMITS.

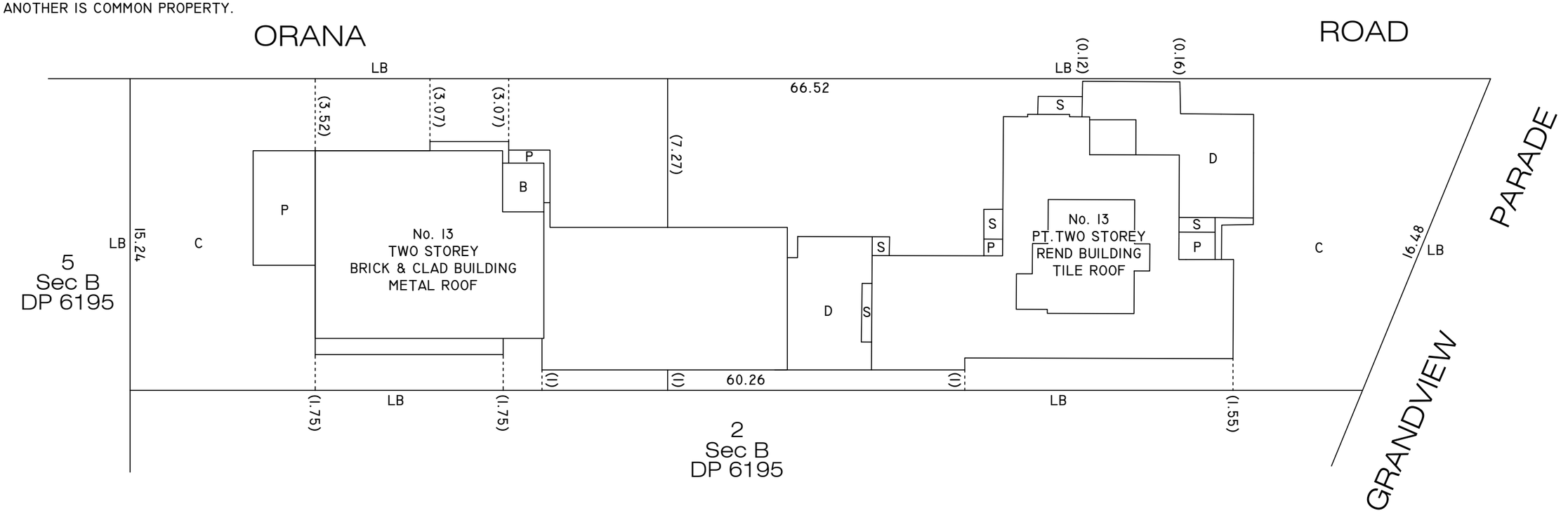
THE STRATUM OF THE DECKS AND STAIRS ARE LIMITED TO
A HEIGHT OF 10 ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE
TIMBER FLOOR, EXCEPT WHERE COVERED WITHIN THESE LIMITS.

THE STRUCTURE OF THE RETAINING WALLS LOCATED
WITHIN THE COURTYARDS ARE COMMON PROPERTY.

ANY COMMON SERVICE LINE IS COMMON PROPERTY.

ANY SERVICE LINE WITHIN ONE LOT SERVICING
ANOTHER IS COMMON PROPERTY.

DRAFT STRATA PLAN IS BASED UPON ARCHITECTURAL PLANS.
ALL AREAS AND DIMENSIONS ARE APROXIMATE ONLY.
ALL AREAS AND DIMENSIONS ARE SUBJECT TO CONSTRUCTION,
FINAL SURVEY AND REGISTRATION OF THE PLAN AT LRS NSW.



LOCATION PLAN

P ~ PATIO
D ~ DECK
B ~ BALCONY
S ~ STAIRS
C ~ COURTYARD
CP ~ COMMON PROPERTY
LB ~ LOT BOUNDARY IS COINCIDENT WITH THE PARCEL BOUNDARY

Surveyor: Anthony William George Clarke Date: 27/08/2026 Surveyor's Ref: 27847S	DRAFT PLAN OF SUBDIVISION OF LOT 1 OF SECTION B IN DP 6195	LGA: NORTHERN BEACHES Locality: MONA VALE Reduction Ratio 1:200 Lengths are in metres.	Registered	SP

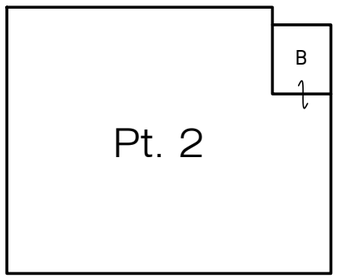
	10	20	30	40	50	60	TABLE OF MM	90	100	110	120	130	140

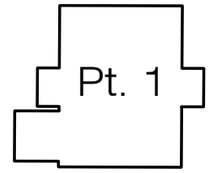
THE STRATUM OF THE BALCONIES ARE LIMITED TO
A HEIGHT OF 5 ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE
FIBRE CEMENT FLOOR, EXCEPT WHERE COVERED WITHIN THESE LIMITS.

ANY COMMON SERVICE LINE IS COMMON PROPERTY.

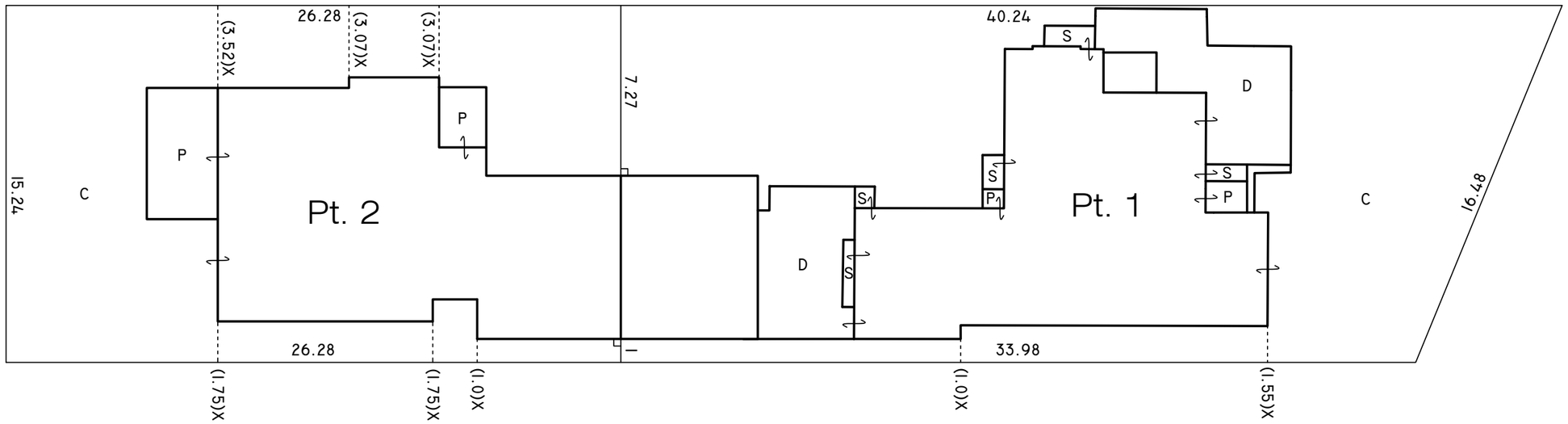
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FINAL SURVEY AND REGISTRATION OF THE PLAN AT LRS NSW.





FIRST FLOOR PLAN



D ~ DECK
x ~ THE PROLONGATION OF THE OUTER FACE OF WALL
S ~ STAIRS
P ~ PATIO
C ~ COURTYARD
⌊ ~ PERPENDICULAR

GROUND FLOOR PLAN

Surveyor: Anthony William George Clarke Date: 27/08/2026 Surveyor's Ref: 27847S	DRAFT PLAN OF SUBDIVISION OF LOT 1 OF SECTION B IN DP 6195	LGA: NORTHERN BEACHES Locality: MONA VALE Reduction Ratio 1:200 Lengths are in metres.	Registered	SP

10 | 20 | 30 | 40 | 50 | 60 | TABLE OF MM | 90 | 100 | 110 | 120 | 130 | 140

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CLAUSE 4.6 REQUEST TO VARY THE MINIMUM LOT SIZE DEVELOPMENT STANDARD

13 Grandview Parade, MONA VALE

1. Introduction

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

2. Pittwater Local Environmental Plan 2014

2.1. Clause 4.2A: Minimum subdivision lot size for strata plan schemes in certain rural, residential and conservation zones

Clause 4.2A of the PLEP 2014 allows for the strata subdivision of dual occupancy's, but only where that subdivision meets the minimum Lot size specified by the PLEP 2014, which is 700m2 in this instance. The development application is accompanied by a written Clause 4.6 variation request to vary development standard of the minimum lot sizes.

The objective of clause 4.2A (1) is to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.

Clause 4.2A (2) applies to land in the following zones that is used, or is proposed to be used, for the purpose of a dual occupancy

(a) Zone RU2 Rural Landscape,
(b) Zone R2 Low Density Residential,
(c) Zone R5 Large Lot Residential,
(d) Zone C4 Environmental Living.

The subject site is zoned R2 low density residential to which this clause applies.

The proposed strata subdivision results in two (2) lots with the areas being:

- Lot 1 = 565.6m² which is a 19.2% variation
- Lot 2 = 400.5m² which is a 42.78% variation

2.2. Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of LEP provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

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

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

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

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

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

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This Clause applies to the Clause 4.2A Minimum lot size Development Standard.

Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a request from the

applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

The proposed development does not comply with the minimum lot size provision at 4.2A(3) of LEP which specifies a minimum lot size of 700m2 for a strata scheme however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

3. Relevant Case Law

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

> *17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
>
> *18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
>
> *19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
>
> *20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47]. Australian Company Number 121 577 768 Alterations and Additions 10 Aiken Avenue, Queenscliff | Page 40*

21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

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

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

1. Is clause 4.2AA of PLEP 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 in the public interest because it is consistent with the objectives of clause 4.2A and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.2A of the LEP?

Clause 4.6 of LEP provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

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

Pursuant to clause 4.6(2) 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.

4. Request for variation

4.1. Is clause 4.2A of PLEP a development standard?

The definition of "development standard" at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

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

Clause 4.2A of PLEP prescribes a minimum lot size provision. Accordingly, clause 4.2A of PLEP is a development standard.

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

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

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

Minimum lot size Standard and Objectives

Pursuant to Clause 4.2A PLEP the minimum lot size for a strata plan is not to be less than the minimum size shown on the lot size map which is 700m². The objective of this clause is:

1) *The objective of this clause is to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.*

Comment: The proposed development comprises a dual occupancy on land zoned R2 Low Density Residential, together with strata subdivision of the two dwellings.

The proposed variation to clause 4.2A(3) does not undermine the objective of clause 4.2A(1). The proposed strata subdivision will not create any additional dwelling entitlement on the subject land. The development provides for two dwellings on the existing parent lot as a dual occupancy, and the proposed strata subdivision merely provides separate strata lots corresponding to those two dwellings.

Importantly, the number of dwellings capable of being established on the land is not increased as a consequence of the proposed strata subdivision. There is no additional dwelling, or additional dwelling opportunity, created through the fragmentation of the land. The proposal therefore does not result in the type of subdivision contemplated by the objective of clause 4.2A(1), being fragmentation that creates additional dwelling entitlements.

The fact that the two resulting strata lots are below the numerical minimum specified by clause 4.2A(3) does not result in inconsistency with the objective of the development standard. The relevant consideration is the planning consequence of the proposed subdivision and, in particular, whether it creates additional dwelling entitlements.

The subdivision does not facilitate an increase in the dwelling yield of the land beyond that already proposed and assessed as part of the permissible dual occupancy development.

Accordingly, notwithstanding the proposed variation to clause 4.2A(3), the objective of clause 4.2A is achieved.

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

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

> *23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

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

Sufficient environment planning grounds

Sufficient environmental planning grounds exist to justify the minimum lot size variation as outlined below.

- The size of the resulting lots is sufficient to provide high levels of amenity, including generous private open space, adequate building setbacks, and functional layouts. The development is consistent with the existing neighbourhood character and does not result in an overdevelopment of the site.

- The subject site is approximately 300m from the Low and Mid Rise mapped area as it relates to the Housing SEPP. In this regard, the dual occupancy proposed on the subject site is more sensitive to the R2 low density zone given its larger resultant lot sizes and strata subdivision compared to what could be achieved within the LMR zone for a similar dual occupancy development. The close proximity to the LMR zone makes the proposed variation more compatible with the desired future character of the locality.

- The strata lot sizes still achieve dwellings that are of reasonable amenity for the occupants with regard to internal amenity, private open space, landscape area, privacy and access despite the variation to lot size.

- The variation does not undermine the objectives of the R2 low density zone which anticipates dual occupancies on land greater than 800m².

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(k)).

- Approval of the variation would promote good design and amenity of the built environment (1.3(g)).

- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(g)).

Overall, there are sufficient environmental planning grounds to justify contravening the development standard.

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:

It is noted that in Initial Action, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

> *87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

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

5. Conclusion

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

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

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

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

William Fleming
Boston Blyth Fleming Pty Ltd
Director
18 September 2026

6 MEETING CLOSURE