

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held in Walamai Room, Northern Beaches Council, Dee Why on

WEDNESDAY 11 APRIL 2018



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 11 April 2018
in the Walamai Room, Northern Beaches Council, Dee Why**

1.0	APOLOGIES & DECLARATIONS OF PECUNIARY INTEREST	
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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 28 MARCH 2018

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 28 March 2018 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 DA2017/1200 - 73 MARINE PARADE AVALON BEACH -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

REPORTING MANAGER Matthew Edmonds

TRIM FILE REF 2018/213909

ATTACHMENTS 1 [↓](#) Assessment Report
2 [↓](#) Site and Elevation Plans

PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council, as the consent authority **REFUSE** Development Consent to Development Application No DA2017/1200 for the Alterations and additions to a dwelling house on land at Lot 114 DP 8394, 73 Marine Parade, AVALON BEACH, subject to the reasons outlined in the report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 11 April 2018

73 Marine Parade Avalon Beach - Alterations and additions to a dwelling house

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/1200
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 114 DP 8394, 73 Marine Parade AVALON BEACH NSW 2107
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	E2 Environmental Conservation E4 Environmental Living
Development Permissible:	Yes - Zone E2 Environmental Conservation Yes - Zone E4 Environmental Living
Existing Use Rights:	No
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	Twenty Titles Pty Limited
Applicant:	IKUS Pty Ltd T/A U+I Building Studio
Application lodged:	13/12/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/12/2017 to 29/01/2018
Advertised:	Not Advertised
Submissions Received:	4
Recommendation:	Refusal
Estimated Cost of Works:	\$ 1,521,450.00



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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 7.5 Coastal risk planning
Pittwater 21 Development Control Plan - 2014 - A4.1 Avalon Beach Locality
Pittwater 21 Development Control Plan - 2014 - B3.1 Landslip Hazard
Pittwater 21 Development Control Plan - 2014 - B3.4 Coastline (Bluff) Hazard
Pittwater 21 Development Control Plan - 2014 - C1.3 View Sharing
Pittwater 21 Development Control Plan - 2014 - C1.4 Solar Access
Pittwater 21 Development Control Plan - 2014 - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - 2014 - C1.23 Eaves
Pittwater 21 Development Control Plan - 2014 - D1.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - 2014 - D1.5 Building colours and materials
Pittwater 21 Development Control Plan - 2014 - D1.8 Front building line
Pittwater 21 Development Control Plan - 2014 - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - 2014 - D1.11 Building envelope
Pittwater 21 Development Control Plan - 2014 - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 114 DP 8394 , 73 Marine Parade AVALON BEACH NSW 2107
Detailed Site Description:	The site is legally described as Lot 114 in Deposited Plan 8394 and is commonly known as 73 Marine Parade, Avalon Beach. The site has a 19.45m wide frontage to Marine Parade to the west, a maximum depth of 103.63m and a total area of 1878m ² . The site adjoins a public reserve and the Pacific Ocean to the east, with a cliff face dissecting the site at a distance of approximately 78m from the western front property boundary. A

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single dwelling is currently situated on the site, with vehicular and pedestrian access gained via Marine Parade. The site is heavily vegetated and is located adjacent to residential dwellings of varying age and character.

Map:



SITE HISTORY

10 April 2017

A prelodgement meeting was held between Council and the Applicant in respect to a development similar to that currently proposed. Minutes of the prelodgement meeting were provided to the Applicant on 10 May 2017.

19 July 2017

Development Application N0309/17 was lodged with Council, seeking consent for a development similar to that currently proposed.

17 October 2017

Following a preliminary assessment of Development Application N0309/17, the applicant was requested to withdraw the application due to concerns/non-compliance relating to:

- Landscaped area
- Front building line
- Insufficient/inaccurate information
- Visual impact and building colours

25 October 2017

Development Application N0309/17 was withdrawn by the applicant.

13 December 2017

The subject Development Application DA2017/1200 was lodged with Council.

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7 March 2018

Following a preliminary assessment of the subject application, correspondence was sent to the applicant identifying areas of non-compliance and insufficient information in relation to:

- Coastal hazard
- Front building line & character
- Driveway detail

The applicant was requested to withdraw the application, or alternatively, a short period would be provided to allow for the application to be amended.

8 March 2018

The applicant acknowledged receipt of the correspondence, and advised that they were making contact with the engineers.

16 March 2018

The applicant submitted amended plans, and confirmed that they would not be submitting any further information.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to the existing dwelling, specifically:

- the construction of a new garage and workshop forward of the existing dwelling, with a rooftop terrace above,
- an extension to the front of the existing dwelling to provide for a rumpus room on the lower floor and a new terrace on the second floor,
- construction of a new two storey rear pavilion at the rear of the site, comprising a master bedroom, ensuite, living room, bathroom and terrace,
- construction of an enclosed stairway and sunroom to join the existing dwelling and the rear pavilion,
- construction of a new internal driveway, and
- ancillary earthworks, tree removal, landscaping, pathways and stairs.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan ("P21 DCP") applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any	None applicable.

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Section 79C 'Matters for Consideration'	Comments
planning agreement	
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 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.</p>
Section 79C (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	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the P21 DCP section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 79C (1) (e) – the public interest	Whilst matters have arisen in this assessment that would justify the refusal of the application, a separate reason for refusal relating to the development not being in the public's interest is not recommended.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED



The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Susan Farrell	41 Fairfax Road Bellevue Hill NSW 2023
Susan Farrell	71 Marine Parade AVALON BEACH NSW 2107
Courcheval Pty Limited	C/- Susan Farrell 41 Fairfax Road Bellevue Hill NSW 2023
Kate Stinson	75 Marine Parade AVALON BEACH NSW 2107

It is noted that Council's automatic system has registered that 4 submissions have been received in response to the notification of this application. However, this appears to have included emails that are not submissions, and repeated submissions from the same property owners. To confirm, submissions from 2 properties have been received in objection to the proposed development.

The matters raised within these 2 submissions are addressed as follows:

- **Validity of Reports**

Comment: A submission has been received from the adjoining property owners at 75 Marine Parade which states that the reports provided to support the application contain errors, and questions the overall validity of the technical information. In particular, the submission raises concern with regards to the content and recommendations of the geotechnical risk management report and the bushfire report, and makes comparisons to reports lodged to accompany a previous development application that has since been withdrawn. However, the submission does not identify any particular errors, or misrepresentations in the documents provided.

In relation to the geotechnical hazard, the geotechnical risk management report has been prepared by a suitably qualified geotechnical engineer, in accordance with the provisions of the *Geotechnical Risk Management Policy for Development in Pittwater*. The submission raises concern with the lack of consideration of recent instability in the vicinity of the site, including the rockfall that occurred at Avalon Headland in 2017. The geotechnical risk management report provided has undertaken a site specific risk assessment, consistent with the provisions of the *Geotechnical Risk Management Policy for Development in Pittwater*.

However, it is acknowledged that the geotechnical report does not appropriately address the coastal hazard that affects the site, and the report provided is inconsistent with the requirement for the assessment to be prepared by a suitably qualified coastal engineer. This is discussed in further detail with respect to clause 7.5 (Coastal risk planning) of PLEP 2014.

The bushfire risk management report has been prepared by a suitably qualified Level 3 Certified Practitioner, being a person who is recognised by the NSW RFS as a qualified consultant in bushfire risk assessment. The bushfire risk management report was supported by a certificate confirming that the development complied with the provisions of *Planning for Bushfire Protection 2006*, as required by Clause 4.14(1)(b) of the EPA Act. The submission raises concerns with the date that the report was signed (21/03/2017), which is the date of the report provided to accompany a previous development application at the subject site.



Whilst the report was originally prepared to support a previous development application at the site, the report has been updated to reflect the current proposal, including reference to the plans provided to support the current proposal dated 10/11/2017, and the cover page of the report includes reference to a revision dated 30/11/2017.

- **Access for fire fighters**

Comment: A submission was received from the adjoining property owners of 75 Marine Parade raising concern with the regards to access to the rear of the subject site for firefighting equipment. Current pedestrian access to the rear of the site is limited to pedestrian access through the existing dwelling. The proposal will allow for access to the rear of the site around the southern elevation of the proposed dwelling. Whilst this access is limited to pedestrian access only, the access provisions are an improvement compared to the current circumstances of the site, and will provide for suitable access in the event of a fire, consistent with the provisions of *Planning for Bushfire Protection 2006*.

- **Maintenance of an APZ**

Comment: Submissions have been received from both neighbouring properties regarding the overgrown nature of vegetation at the subject site, with concerns regarding the maintenance of necessary APZs in the future. The current landscaping at the site does not comply with the provisions of *Planning for Bushfire Protection 2006*, and clearing/thinning is required. However, the bushfire hazard does not necessitate the removal of all vegetation on the site, and a balance is to be achieved between achieving an appropriate landscaped character and the necessary provisions of the APZ requirements.

Whilst the Applicant has expressed a desire to retain as much of the existing vegetation on the site as possible, the existing vegetation will need to be thinned, with no canopy within 2m of the existing or proposed buildings. In this regard, it is noted in the arborist report that further tree removal beyond that shown in the drawings may be required. Conditions of consent are recommended to ensure certification of the landscaping prior to the issuance of both a Construction Certificate and an Occupation Certificate, with further conditions to maintain the necessary APZ requirements over the life of the development.

- **Geotechnical & Coastal Hazards**

Comment: A submission has been received from the property owners of 75 Marine Parade which states that the reports provided do not provide protection from the geotechnical and coastal hazards that affect the site, with suggestions that the cliffs are unstable and should not be built upon. As above, the application was supported by a geotechnical risk management report, which included a report from a geologist, addressing the geotechnical hazard that affects the site. The report concludes that the proposed extension is located over a stable rock shelf, approximately 9-15m from the cliff line, and the cliff face appears to be in a stable condition with no obvious signs of instability. It is also noted that the proposed works are generally aligned with the footprint of development on both adjoining sites, behind the foreshore building, and outside the E2 zone.

However, the proposal does not adequately address the coastal hazard that affects the site, as discussed in further detail with respect to clause 7.5 (Coastal risk planning) of PLEP 2014.

- **View Loss**



Comment: A submission was received from the property owners of 75 Marine Parade which asks or consideration of those issues raised in a submission to a previous application lodged for the site, which included concerns regarding the loss of views. This issue is considered in more detail with regard to clause C1.3 (View Sharing) of P21 DCP.

- **Overshadowing**

Comment: A submission has been received from the adjoining property owners to the south at 71 Marine Parade, raising concern with regard to potential overshadowing associated with the proposed development. This issue is discussed in more detail with regard to clause C1.4 (Solar Access) of P21 DCP.

- **Visual Privacy**

Comment: A submission has been received from the adjoining property owners to the south at 71 Marine Parade, raising concern with regard to overlooking from the proposed rear addition. This issue is discussed in more detail with regard to clause C1.5 (Visual Privacy) of P21 DCP.

- **Acoustic Privacy**

Comment: A submission has been received from the adjoining property owners to the south at 71 Marine Parade, raising concern with regard to noise levels associated with the proposed deck, and the proximity to bedrooms in the home. The proposed rear covered terrace is proposed adjacent to areas of private open space of the dwelling at 71 Marine Parade, and the noise levels associated with the use of the almost entirely enclosed terrace are not considered to be unreasonable within the residential setting.

- **Colours and Finishes**

Comment: A submission has been received regarding the colours and finishes of the proposed development, with concerns that the proposal will not blend with the surrounding development, resulting in an eyesore. The appropriateness of the proposed colours and finishes is discussed in further detail with regard to clause D1.5 (Building Colours and materials) of P21 DCP.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape proposal is generally acceptable.</p> <p>The retention of the existing vegetation within the front setback will maintain the current positive impact to the built form of the development, with the built form softened and</p>

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Internal Referral Body	Comments
	<p>complimented by landscaping, that includes additional tree canopy planting to the front setback.</p> <p>The landscape plan provides a co-ordinated approach that considers the requirements of the Ecological Impact Assessment and the Bushfire Hazard Assessment.</p>
NECC (Bushland and Biodiversity)	<p>Council's Bushland and Biodiversity section raises no objection to the proposal, subject to conditions.</p> <p>Council's Bushland and Biodiversity has assessed the development application against the following Pittwater 21 DCP 2014 Controls:</p> <p>B4.6 Wildlife Corridors Outcomes: Retention and enhancement of wildlife corridors ensuring/providing the connection of flora and fauna habitats. The development application complies with this control</p> <p>B4.22 Preservation of Trees and Bushland Vegetation Outcomes: To protect and enhance the urban forest of the Northern Beaches. To effectively manage the risks that come with an established urban forest through professional management of trees. To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction. To protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities. To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long-term. To protect and enhance the scenic value and character that trees and/or bushland vegetation provide. The development application complies with this control</p>
NECC (Coast and Catchments)	<p>The Geotechnical Risk Management Policy for Pittwater (Appendix 5 P21 DCP) requires that where the site is in a coastal bluff area, as defined by Council's Coastline Hazards Map, the Geotechnical Engineer must engage a Coastal Engineer to provide an assessment of the impact of coastal processes and identification of the coastal forces that impact on the site.</p> <p>The report must address all sections of the above policy in a format that can demonstrate compliance with the policy. As the site is within a coastal bluff area, a Coastal Engineer is to also provide an assessment of the impact of coastal process and identification of coastal forces that impact the site. This report should form an appendix to the Geotechnical Report and the geotechnical analysis must include an interpretation of the influence of coastal processes and forces on the site and the development. Declarations where applicable on the Forms attached to the Policy must also be completed by the coastal engineer (as defined by the Policy).</p> <p>Whilst a Coastline Assessment prepared by an engineering geotechnical has been included as an appendix in the Geotechnical Report it incorrectly cites paragraph 9.3 of the Coastline Risk Management Policy for Development in Pittwater as the basis for advising that a Coastal Risk Management report is not required for the subject DA. The</p>



Internal Referral Body	Comments
	<p>requirement for a coastal processes and coastal forces analysis for a site in a coastal bluff area however is a requirement of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 P21 DCP).</p> <p>Where minor ads and alts are proposed, particularly if the works are entirely within the footprint of existing development, the need for a coastal engineering assessment to be provided with the Geotechnical Risk Management Report may be waived at the discretion of Council's development engineers. I am not aware that this is the case in respect of the subject DA.</p> <p>As the relevant Policy requires that in a bluff area the Geotechnical Consultant must engage a Coastal Engineer to provide an assessment of the impact of coastal processes and identification of the coastal forces that impact on the site, such assessment should be included with the Geotechnical Report. If in the opinion of a Coastal Engineer, as defined by the Policy, the coastal processes likely to impact the site are not a relevant consideration over the design life of the development then a declaration to that effect by the Coastal Engineer may be accepted in lieu of a detailed coastal engineering assessment.</p> <p>With regard to recent rock falls elsewhere on the headland, the relevance or otherwise of these failures to the stability of the subject site is a matter for the geotechnical consultant to determine and could be raised in a request for additional information.</p>
NECC (Development Engineering)	<p>The following additional information is requested for the proposed development prior to full assessment :-</p> <ul style="list-style-type: none"> The Geo-technical report prepared by Crozier dated 17/11/2017 is in compliance with Council's Geotechnical risk management policy for Pittwater (Appendix 5 P21 DCP). However the subject site is located in coastal Bluff area. In this regard the recommendation for a Coastal Engineer assessment as requested in Paul Hardie (Principal Officer - Coast & Estuary - Trim 2018/159583) is to be submitted. The preliminary assessment of the proposed driveway to the garage is very steep and does not comply with Council's Vehicular crossing profile and AS/NZS 2890.1;2004. In this regard cross-sectional details for the driveway is to be submitted to Council, demonstration compliance with the above standards. A Maximum High Standard Vehicular Crossing Profile (3330/6) is recommended for the vehicular crossing profile within the public road. (https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/minorworksspecification20100527.pdf) <p>Dated 23/03/2017</p> <p>In regards to dot point 2 above, a review of the revised driveway plan show a drop in the proposed garage level. The applicant proposes to match and keep the existing vehicular crossing levels. In view of the amended plan the proposed internal access is in compliance with B6 controls of Council's DCP.</p> <p>The Water and Site management plan (B5, B8 DCP) is acceptable subject to conditions.</p>

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Internal Referral Body	Comments
	No Development Engineering objection is raised to the proposed development subject to conditions and complying with dot point 1 mentioned above.
Property Management and Commercial	No objection to the proposal as submitted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for ongoing residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted with the application (see Certificate No. A282618_02 dated 28 November 2017). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP 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).

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- 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.

The proposal was referred to Ausgrid, who provided a response, including recommended conditions of consent.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone E2 : Yes Zone E4 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone E2 : Yes Zone E4 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.4m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	N/A
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.1 Relevant acquisition authority	Yes
5.1A Development on land intended to be acquired for public purpose	Yes
5.10 Heritage conservation	N/A
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	No
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

7.5 Coastal risk planning

The site is identified as being subject to Bluff/Cliff Instability, as shown on the Coastal Risk Planning

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Map of PLEP 2014, and the provisions of clause 7.5 (Coastal risk planning) of PLEP 2014 and clause B3.4 (Coastline (Bluff) Hazard) of P21 DCP are applicable to the subject application.

Coastal hazards across the former Pittwater LGA are predominantly addressed by the *Coastal Risk Management Policy for Development* (Appendix 6 of P21 DCP). However, as prescribed by this policy, in circumstances where the coastal hazard relates to bluff/cliff instability, a Coastal Risk Management Report is to be incorporated as an appendix to the Geotechnical Risk Management Report prepared for the site under the provisions of the *Geotechnical Risk Management Policy for Development in Pittwater* (Appendix 5 of P21 DCP).

This is endorsed by clause B3.4 of P21 DCP, which requires consistency with the *Geotechnical Risk Management Policy for Development in Pittwater*, and the policy itself, as follows:

For coastal bluff areas designated on Pittwater's Coastal Risk Planning Map, a coastal engineer's report on the impact of coastal processes on the site and the coastal forces prevailing on the bluff must be incorporated into the geotechnical assessment as an appendix and the Coastal Engineer's assessment must be addressed through the Geotechnical Report and structural specification.

The application was supported by a geotechnical report which included a "Coastline Assessment", prepared and reviewed by two Engineering Geologists. Whilst the findings of the Coastline Assessment may ultimately prove to be correct, the assessment has not been prepared by a suitably qualified Coastal Engineer, inconsistent with the requirements of the *Coastal Risk Management Policy for Development* and the *Geotechnical Risk Management Policy for Development in Pittwater*.

The applicant was provided with an opportunity to provide the relevant assessment/certification during the assessment process. However, the applicant subsequently confirmed that such information would not be provided. Without assessment and certification from a suitably qualified Coastal Engineer, the proposal is non-compliant with the requirements of clause B3.4 of P21 DCP and Council cannot be satisfied that the proposed development is consistent with the provisions and objectives of clause 7.5 of PLEP 2014. As such, the application is recommended for refusal in this regard.

Pittwater 21 Development Control Plan - 2014

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	19m	6.8m	64%	No
Rear building line	FSBL (40m)	41.6m	-	Yes
Side building line	2.5m	1m, 2.5m	-	No
	1m	2.5m, 1m	-	No
Building envelope	3.5m (north)	Within envelope	-	Yes
	3.5m (south)	Outside envelope	-	No
Landscaped area	60%	56.6%	5.7%	No

Compliance Assessment

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Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	No	No
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	No	No
B3.2 Bushfire Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	No	No
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	N/A	N/A
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
B8.2 Construction and Demolition - Erosion and Sediment Management	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	N/A	N/A
B8.6 Construction and Demolition - Traffic Management Plan	N/A	N/A
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
C1.23 Eaves	No	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D1.1 Character as viewed from a public place	No	Yes
D1.5 Building colours and materials	Yes	No



Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.8 Front building line	No	No
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	No
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.1 Avalon Beach Locality

Clause A4.1 of P21 DCP prescribes the desired future character of the Avalon Beach locality as follows:

Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with development. The objective is that there will be houses amongst the trees and not trees amongst the houses. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards. Most houses are set back from the street with low or no fencing and vegetation is used extensively to delineate boundary lines. Special front building line setbacks have been implemented along Avalon Parade to maintain the unique character of this street. This, coupled with the extensive street planting of canopy trees, gives the locality a leafy character that should be maintained and enhanced.

Subject to conditions requiring the use of darker tones to ensure that the development blends with surrounding vegetation, the design of the proposed built form could reasonably achieve consistency with the desired future character prescribed for the Avalon Beach locality. However, the proposal is let down by the lack of appropriate consideration of the coastal hazard that affects the site, and the inability to confirm that the development has been designed to be safe from hazards.

B3.1 Landslip Hazard

Clause B3.1 of P21 DCP requires the development to comply with the provisions of the *Geotechnical Risk Management Policy for Development in Pittwater*. Whilst the application was supported by a geotechnical report which satisfactorily addresses the geotechnical hazard that affects the site, the report does not appropriately address the coastal hazard that affects the site, resulting in inconsistency with the provisions of the *Geotechnical Risk Management Policy for Development in Pittwater*, and in turn the provisions of this development control.

B3.4 Coastline (Bluff) Hazard

As discussed with regard to clause 7.5 of PLEP 2014, above, the application does not satisfactorily address the coastal hazard that affects the site, as certification from an appropriately qualified Coastal

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Engineer has not been provided. As such, not only is the application inconsistent with the provisions of the *Coastline Management Policy for Development in Pittwater* and the *Geotechnical Risk Management Policy for Development in Pittwater*, Council cannot be satisfied that the development will not adversely affect or be adversely affected by coastal processes, or that it will not result in an increased level of risk for any people, assets and infrastructure in the vicinity of the site due to coastal processes, resulting in inconsistency with this development control.

It is noted that the coastal assessment provided identifies that as part of the geotechnical investigation, the headland cliffs were inspected from both the beach and the site. Noting that there is no beach adjacent to the subject site and that the base of the cliffs is generally inaccessible, it would be of assistance to understand how the inspection of the cliffs was undertaken. This information was requested of the applicant, however no response was provided.

C1.3 View Sharing

Both adjoining properties at 71 and 75 Marine Parade currently obtain views across the subject site. The potential impact upon these views is considered separately, as follows:

71 Marine Parade

The occupants of 71 Marine Parade currently enjoy expansive views of the Pittwater waterway, Avalon Beach and the surrounding locality from the north-west through to the south, with ocean views to the east. A submission was received questioning whether the proposal had potential to impact upon views of Pittwater to the north-west. A site inspection was undertaken in the presence of the property owners, and as there is no change to the height of the existing roof, it was confirmed that the proposal will not impact upon views in the north-westerly direction.

75 Marine Parade

The occupants of 75 Marine Parade also enjoy expansive views of the Pittwater waterway, Avalon Beach and the surrounding locality from the north-west through to the south, with ocean views to the east. The submission received raises objection to the proposal with respect to the permanent blockage of ocean and headland views currently enjoyed to the south, and objects to the view analysis prepared by the applicant as it does not acknowledge the views in a southerly direction. A site inspection was undertaken in the presence of the property owners and the following was observed:

- Views of Avalon Beach are currently available from the front upper floor balcony at 75 Marine Parade in a south-westerly. These views are obtained over the roof of the existing dwelling and will not be impacted by the proposal.
- Views of Pittwater are also available from the front upper floor balcony and rooms facing west, which will not be impacted by the proposal.
- Ocean views are available from the rear balcony and rooms facing east, which will not be impacted by the proposal.
- Dense vegetation currently obstructs any views that may be available in a southerly direction from both the front upper level balcony and the rear balcony.

The property owners of 75 Marine Parade advise that ocean and headland views were previously available from both the front upper level balcony and the rear balcony in a southerly direction, and object to the permanent removal of these views as a result of the proposed two storey rear pavilion.

It is noted that even if views were currently available in a southerly direction from the front balcony, any views would be retained in this direction as the proposed rear pavilion is situated behind and to the south-east of the front balcony at 75 Marine Parade. However, whilst the proposed additions would obstruct any view that may have been available from the rear deck in a southerly direction, the view has already been lost to vegetation and potentially even the existing dwelling at 71 Marine Parade, and



existing views in all other directions are maintained. The potential, unquantifiable impact upon a view previously obtained over a side boundary is not considered to warrant the refusal of the subject application.

C1.4 Solar Access

A submission has been received from the adjoining property owners to the south, raising concern with regard to potential overshadowing associated with the proposed development. The adjoining property owners have subsequently confirmed that their concerns relate primarily to an existing area of private open space to the north of their dwelling, to the south of the proposed rear pavilion structure. The subject area of private open space is roofed to the boundary, with existing overshadowing from a boundary fence and vegetation.

Whilst the shadow diagrams indicate additional overshadowing of this area of private open space at midday in midwinter, the minor impact is not considered to be unreasonable, nor non-compliant with the requirements of this control. Furthermore, it is noted that solar access to this particular area will be increased in the morning and afternoon as a result of vegetation clearing occurring on the site, and other areas of private open space will remain unaffected by the proposal.

C1.5 Visual Privacy

A submission has been received from the adjoining property to the south, raising concern with regard to potential overlooking between the proposed rear pavilion structure and an existing area of private open space on the northern side of their dwelling. Despite the incorporation of highlight windows on the southern elevation of the proposed covered terrace, the difference in levels will mean that there will be a direct line of sight between the two adjacent areas of private open space. If approved, a condition of consent is recommended to require the windows to be fixed and frosted.

The upper floor of the rear pavilion also features balconies on both the eastern and western elevations. The balconies are associated with the master bedroom and have been designed to capture the expansive views available to the north-west through to the south, and the east. The balconies are situated on the northern side of the site, and the resulting spatial separation, combined with the use of the space in conjunction with a bedroom, is considered to ensure reasonable levels of privacy between the adjoining residential properties.

C1.23 Eaves

The proposed additions do not include 450mm eaves on all elevations. However, the architectural style of the proposed additions are considered to reflect the coastal character of Pittwater, and appropriate shading and weather protection is achieved. The application was also supported by a BASIX Certificate to confirm that the proposed design solution performs appropriately with regard to thermal efficiency.

D1.1 Character as viewed from a public place

The application proposes an excessively large garage and workshop in front of the existing building, forward of the established building line. The location, size and design of the proposed garage and workshop is inconsistent with this development control which requires:

- garages to be setback behind the building line, with a preference for garages to be behind the front facade of a dwelling,
- unarticulated walls presenting to the street to be limited to 8m in width, and
- building facades to have at least two specific design features.

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The siting and design of the proposed garage and workshop also attributes to inconsistency with the outcomes of this development control, specifically that which requires new development to sensitively respond to the spatial characteristics of the existing built and natural environment. The reasonableness of the size, scale and design of the garage is discussed in further detail with regard to clause D1.8 of P21 DCP.

D1.5 Building colours and materials

The application proposes the use of Colorbond sheeting in 'Windspray' for all new roof forms and cladding on the northern and southern sides of the upper floor of the rear pavilion. Although 'Windspray' is ordinarily considered to be the lightest of the mid-grey tones that can achieve consistency with the colours nominated by clause D1.5 of P21 DCP, it is considered to be too light for the vegetated and visually prominent site. To appropriately minimise the visual prominence of the proposal and achieve consistency with the objectives of this development control, the use of a darker tone, such as 'Monument' is considered to be required for the new roof forms. Should the application be approved, a condition of consent is recommended in this regard.

D1.8 Front building line

Existing setback: 19m (approximately)
Setback of neighbouring dwellings: 13m - 30m
Proposed setback: 6.8m

Clause D1.8 of P21 DCP prescribes that built structures are not permitted within the front building setback, being 6.5m or the established building line, whichever is the greater. In consideration of the context of the site and the deep setbacks of the nearby dwellings, the minimum setback requirement is considered to be reflected by the established building line, being the alignment of the front facade of the existing dwelling.

With this in mind, the proposal is non-compliant with the minimum front setback requirements of this development control, with the proposed garage/workshop, roof garden, rumpus room and upper floor deck all situated forward of the established building line. The reasonableness of these elements are considered individually as follows:

- Garage/Workshop
Clause D1.8 of P21 DCP provides a variation for reduced setbacks associated with parking structures on steeply sloping or constrained sites, with a requirement for all other structures to be located behind the minimum setback. Whilst this variation is considered to be reasonably applied for a double garage forward of the existing dwelling, the size and scale of the proposed garage and workshop (with an area of 130m²) is considered excessive and is inconsistent with the intent of the variation.

It is appreciated that the current design of the garage/workshop could potentially facilitate consistency with the outcome of this development control for vehicular movement in a forward direction to be facilitated, with the ability to turn a vehicle within the northern half of the space. However, this is dependant upon that space remaining clear at all times, which is somewhat of an unrealistic expectation that would defeat the purpose of enclosing the space. If the ability to turn and egress the site in a forward direction was deemed to be necessary, the same turning space could be provided external of the enclosed garage, without attributing to unnecessary bulk and scale and non-compliance with the minimum setback requirements. However, in accordance with clause B6.2 of P21 DCP, the provision for vehicles to enter and exit the site in a forward direction is not required for this site, as:

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- the gradient of the driveway does not exceed 1:4;
 - the site does not adjoin a roadway that is subject to high pedestrian use;
 - the length of the driveway does not exceed 30m; and
 - the driveway does not enter onto a classified road.
- Roof Terrace
A roof terrace is proposed over the garage and workshop, also forward of the established building line. The inclusion of the proposed terrace necessitates the incorporation of a balustrade, increasing the visual impact of the garage structure below. The proposed terrace is one of 3 new areas of private open space proposed in the subject application, 2 of which are forward of the existing dwelling and the established building line. Noting that the control aims to minimise structures forward of the established building line, and retain and enhance vegetation to reduce visual impact, it is considered that the rooftop area would be more appropriately used for landscaping, to assist in achieving the outcomes of the development control to warrant other areas of proposed non-compliance.
 - Rumpus Room
The application seeks consent to extend the existing lower level of the dwelling forwards towards the street, to provide for a new rumpus room. Whilst inconsistent with the established building line, the proposed rumpus room is to be setback 16.5m from the street, and is of minimal bulk and scale. The proposed rumpus room is not considered to attribute to inconsistency with the outcomes of this development control.
 - Upper Floor Deck
The application seeks consent to extend the existing front deck on the upper level to provide a more usable area of private open space adjacent to the dining room. The existing deck is comparably narrow, and does not comply with the minimum dimensions of clause C1.7 of P21 DCP. The proposed extension is reasonably minimised, and does not attribute to excessive bulk and scale, and despite non-compliance, the extended deck is not inconsistent with the outcomes of this development control.

Concerns regarding the design and size of development forward of the established building line were raised with the applicant during the assessment process, and the applicant was requested to reduce the amount of development proposed forward of the existing dwelling. In response to the concerns raised by Council, the applicant presented amended plans demonstrating an increase to the area of the garage/workshop and a decrease to the setback to Marine Parade.

In consideration of both the original proposal and the amended plans, the proposal is not consistent with the minimum front building line, or the following outcomes of this development control:

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

Comment: Existing vegetation is proposed for removal to provide for the oversized garage/workshop, with limited opportunity to provide for compensatory landscaping forward of the existing dwelling. The proposed development results in a reduction to landscaping and an increase to the visual impact of built form at the site.
- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*

Comment: The proposed garage/workshop does not appropriately respond to the established



building line along this stretch of Marine Parade, and will be at odds with the deep setbacks seen on adjoining sites.

Overall, the extent of non-compliance with the technical requirements and outcomes of the minimum front building line development is considered to warrant refusal of the proposed development.

D1.9 Side and rear building line

Setbacks of garage: 2.5m to northern side boundary, 1m to southern side boundary
Setbacks of dwelling additions: 4m to northern side boundary, 1.9m to southern side boundary
Setbacks of rear pavilion: 1.7m to northern side boundary, 2.5m to southern side boundary

Whilst each component of the proposed development adheres with the 1m and 2.5m minimum setbacks prescribed by this control, the proposal is technically non-compliant as the setbacks alternate along the site, with proposed development within 2.5m from each side boundary. However, given the spatial separation between the existing dwelling and the proposed rear addition, the alternating setbacks will not be readily perceived as seen from the public domain, and the siting of the proposal in proximity to the side boundaries is considered to be reasonable.

As each section of the proposal has been sited with at least 1m to one side and 2.5m to the other, the proposed development does not appear to be unreasonably wide for the site, with adequate spatial separation between adjoining properties to ensure that a reasonable level of amenity will be retained. Overall, the siting of the proposed additions does not detract from consistency with the outcomes of this control, and if anything, can be said to be consistent with the particular outcome that encourages flexibility in the siting of buildings.

D1.11 Building envelope

The majority of the proposed additions are maintained below the prescribed building envelope plane, with the exception of the southern corner of the extended terrace proposed in front of the existing dwelling. The extended terrace replaces an existing deck on the front facade of the dwelling, and provides relief along an otherwise unarticulated facade. The minor protrusion associated with the open, light-weight structure does not attribute to excessive bulk and scale, and does not result in any unreasonable upon the environment or adjoining dwellings. As such, the proposal is considered to be consistent with the outcomes of this control, despite the minor breach of the prescribed building envelope.

D1.14 Landscaped Area - Environmentally Sensitive Land

The proposed development covers an area of 553m² resulting in a landscaped area calculation of 723m² or 56.6% of the total site, inconsistent with the 60% minimum prescribed by this development control. The applicant seeks the application of variations to allow for the exclusion of pathways less than 1m in width and recreation areas, however even if these areas were to be excluded, the proposal still falls just shy of the minimum requirement with a landscaped area calculation of 750.9m² or 58.8% of the total site.

The landscaped area non-compliance can be directly attributed to the oversized 130m² garage/workshop proposed in front of the existing dwelling, which has been increased in size by 25.5m² during the assessment process. If the garage/workshop was reduced in size to reflect a typical double (or even triple) car garage, the landscaped area would be increased by a minimum of 75m², to achieve a landscaped area calculation of 798m² or 62.5% of the total site, consistent with this development control. It is with this in mind that it is difficult to suggest that the current enlarged proposal has been



designed to be consistent with the outcome of the landscaped area control which aims to ensure that the bulk and scale of the proposal has been minimised.

Without consistency with the outcomes of the landscape area control, the application of any variations is not considered to be warranted and the proposal remains non-compliant with the minimum landscaped area prescribed. The landscaped area non-compliance, combined with concerns regarding the scale of the development forward of the established building line, is considered to warrant refusal of this 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 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2017/1200 for the Alterations and additions to a dwelling house on land at Lot 114 DP 8394,73 Marine Parade, AVALON BEACH, for the reasons outlined as follows:

1. The application fails to adequately consider and address the coastal hazard that affects the site, resulting in inconsistency with clause 7.5 (Coastal risk planning) of PLEP 2014 and clause B3.4 (Coastline (Bluff) Hazard) of P21 DCP.
2. The proposed development is inconsistent with the established building line, resulting in non-compliance with the provisions and outcomes of clause D1.8 (Front Building Line) of P21 DCP.

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The size and design of the non-compliant garage/workshop structure is also inconsistent with the aims and objectives of clause D1.1 (Character as viewed from a public place) of P21 DCP and attributes to inconsistency with the requirements and outcomes of clause D1.14 (Landscaped Area - Environmentally Sensitive Land) of P21 DCP.



PROPOSED SITE PLAN & ANALYSIS

DA102

Client: S. Rosen

Project E. Address: Alterations & Additions to Existing Dwelling

Scale: 1:2000

73 Marine Parade, Avalon NSW 2107

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concept | architecture | design | interior

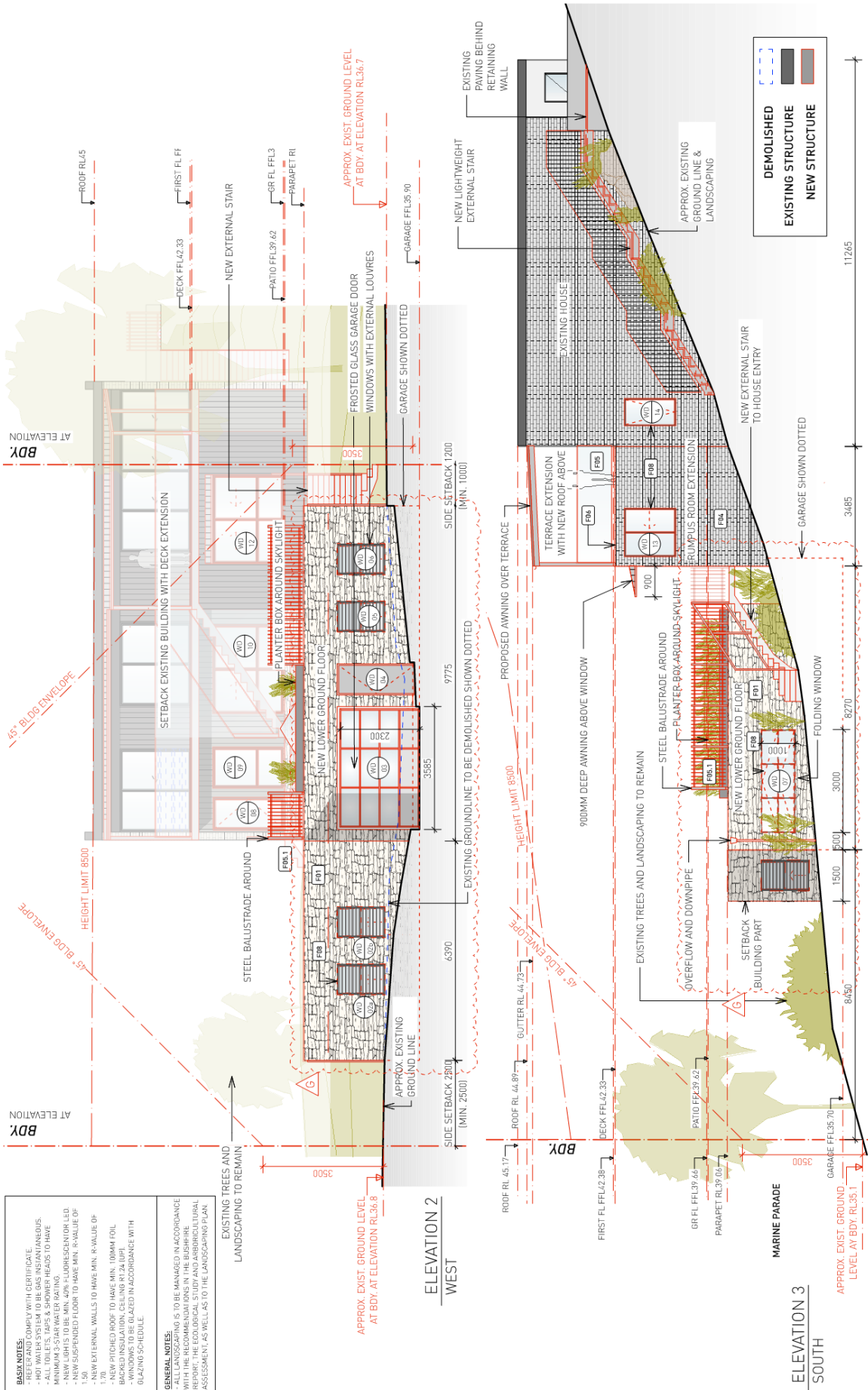
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15/03/18

6



DEVELOPMENT APPLICATION				PROPOSED ELEVATIONS					
	Scale 1:1000A3	Project & Address Alterations & Additions to Existing Dwelling 73 Marine Parade, Avalon NSW 2107	Client S. Rosen	DWG No	Revision	Date 15/03/18			
				DA410	6				
				U+U BUILDING STUDIO				E: info@buildingstudio.com W: www.u+ubuildingstudio.com	
				concept architecture design interior					



DEVELOPMENT APPLICATION			
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Alterations & Additions to Existing Dwelling			
73 Marine Parade, Avalon NSW 2107			
concept architecture design interior			
U+I BUILDING STUDIO			
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W: www.uibuildingstudio.com			
S. Rosen			
Client			
DA420			
Revision			
6			
Date			
15/03/18			



BASIC NOTES:

- 1. REFER AND COMPLY WITH CERTIFICATE.
- 2. HOT WATER SYSTEM TO BE GAS INSTANTANEOUS.
- 3. ALL TOILETS, TAPS & SHOWER HEADS TO HAVE MINIMUM 3-STAR WATER RATING
- 4. NEW LIGHTS TO BE MIN. 40% FLUORESCENT LED.
- 5. NEW SUSPENDED FLOOR TO HAVE MIN. R-VALUE OF 1.50.
- 6. NEW EXTERNAL WALLS TO HAVE MIN. R-VALUE OF 1.70.
- 7. NEW PITCHED ROOF TO HAVE MIN. 100MM FOIL BACKED INSULATION, CEILING R1.
- 8. WINDOWS TO BE GLAZED IN ACCORDANCE WITH GLAZING SCHEDULE.

GENERAL NOTES:
ALL LANDSCAPING IS TO BE MANAGED IN ACCORDANCE WITH THE RECOMMENDATIONS IN THE BUSHFIRE REPORT, THE ECOLOGICAL STUDY AND ARBORICULTURAL ASSESSMENT, AS WELL AS TO THE LANDSCAPING PLAN.

DEMOLISHED
EXISTING STRUCTURE
NEW STRUCTURE

PROPOSED ELEVATIONS

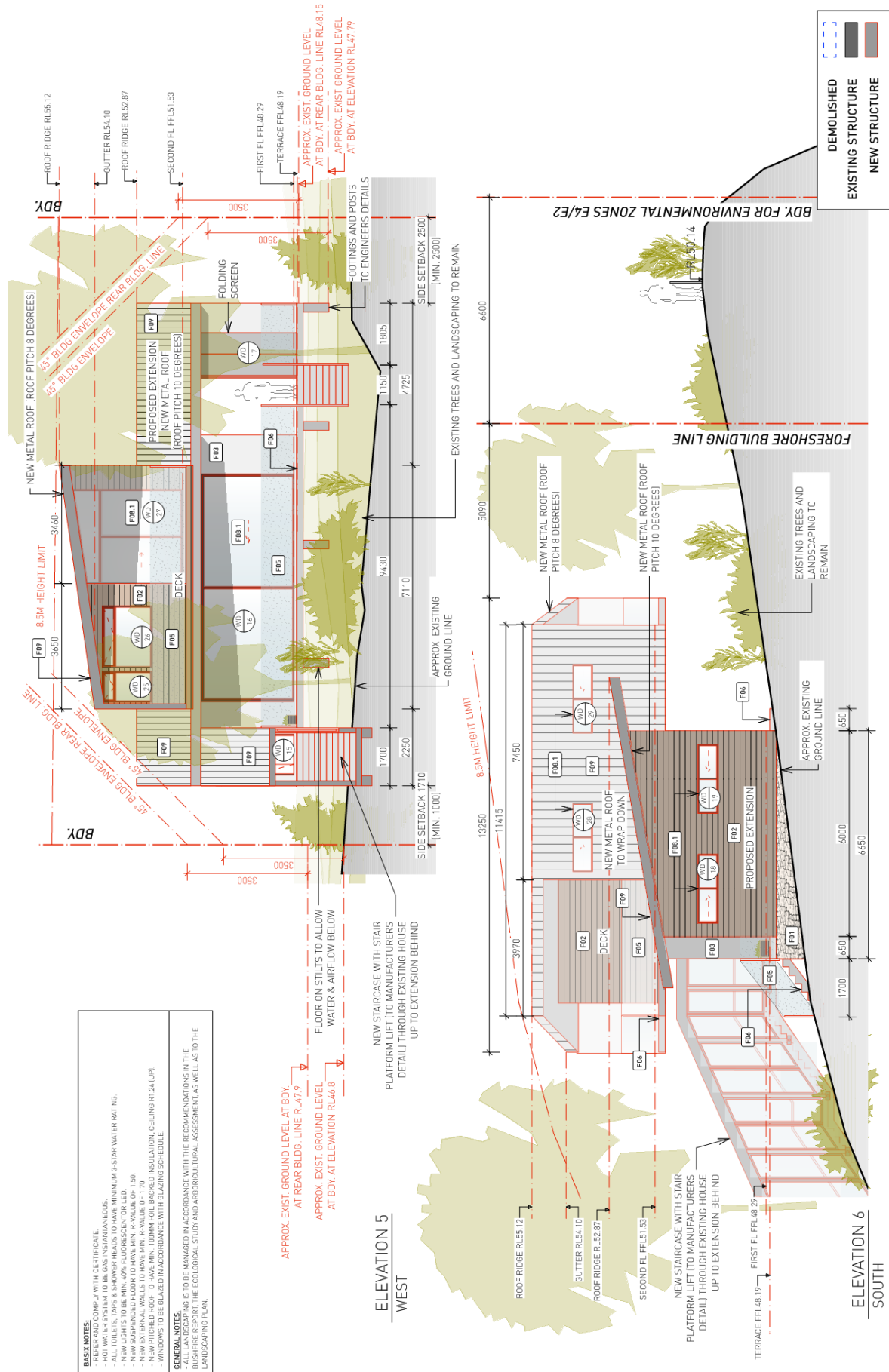
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DA430

Revision	Date
G	15/03/18

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DEVELOPMENT APPLICATION

PROPOSED ELEVATIONS

DA440

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73 Marine Parade, Avalon NSW 2107

Alterations & Additions to Existing Dwelling

interior | design | architecture | concept

Client: S. Rosen

Project & Address: 73 Marine Parade, Avalon NSW 2107

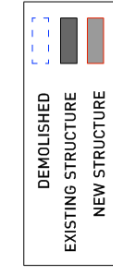
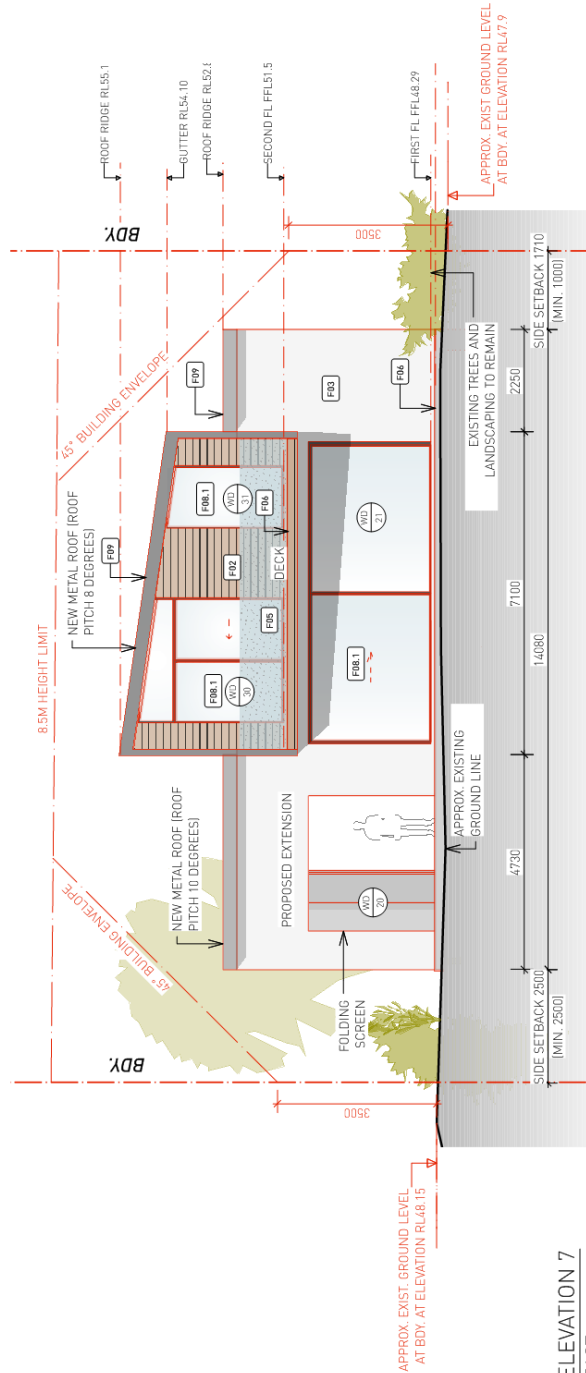
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Date: 10/11/17

Revision: F

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BASIC NOTES:
- REFER AND COMPLY WITH CERTIFICATE
- HOT WATER SYSTEM TO BE GAS INSTANTANEOUS
- ALL TOILETS, TAPS & SHOWER HEADS TO HAVE MINIMUM 3-STAR WATER RATING
- NEW COOKS TO BE MIN. 60% FLUORESCENT LED
- NEW EXTERNAL WALLS TO HAVE MIN. R-VALUE OF 1.50
- NEW PITCHED ROOF TO HAVE MIN. 100MM FOIL BACKED INSULATION, CEILING R1.24 (UP)
- WINDOWS TO BE GLAZED IN ACCORDANCE WITH GLAZING SCHEDULE

GENERAL NOTES:
- ALL LANDSCAPING IS TO BE MANAGED IN ACCORDANCE WITH THE RECOMMENDATIONS IN THE BUSHFIRE REPORT, THE ECOLOGICAL STUDY AND ARBORECUITURAL ASSESSMENT AS WELL AS TO THE LANDSCAPING PLAN.

PROPOSED ELEVATIONS

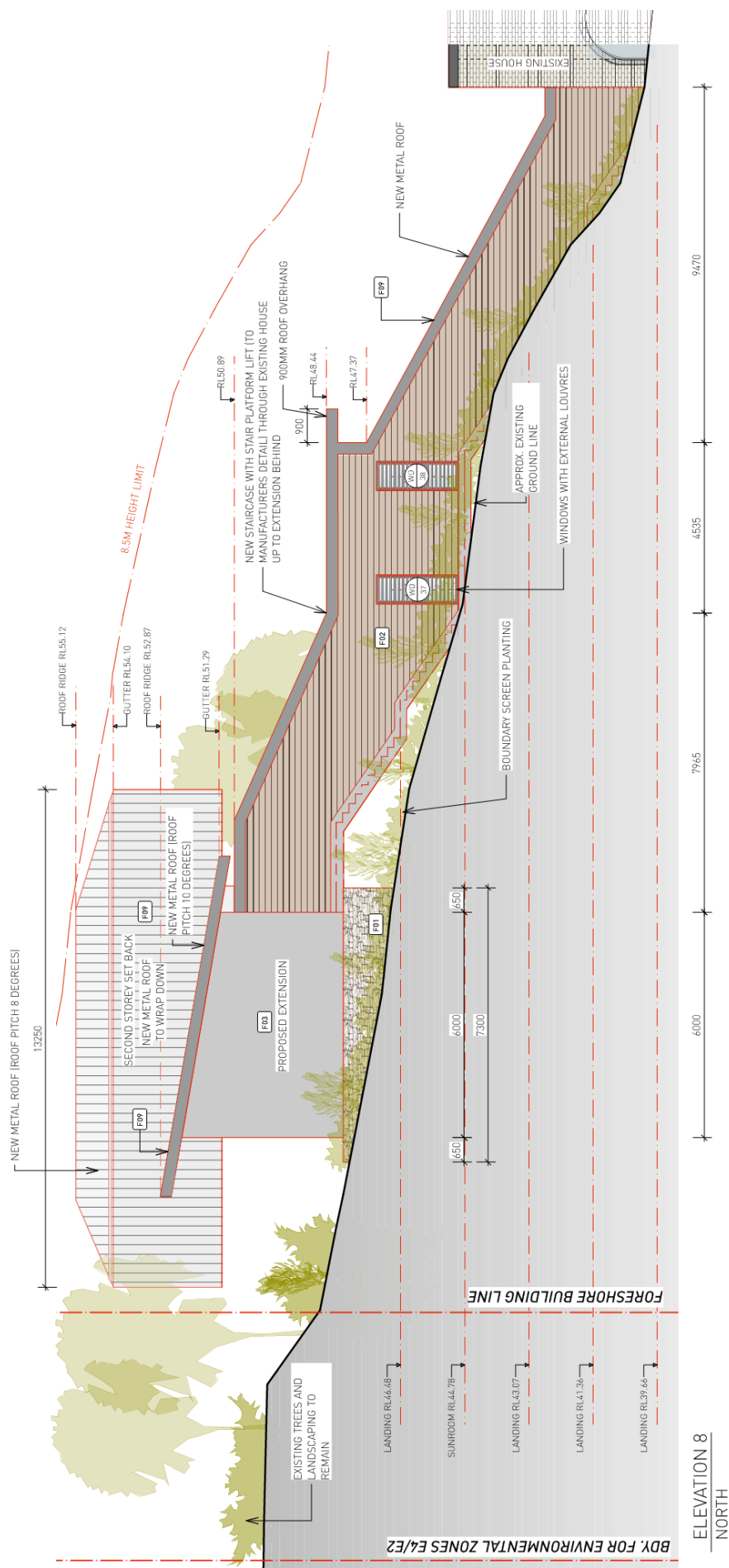
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Client: S. Rosen
Project & Address: 73 Marine Parade, Avalon NSW 2107

Alterations & Additions to Existing Dwelling
interior | design | architecture | concept

Scale: 1:100GAG
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BUILDINGSTUDIO

DEVELOPMENT APPLICATION






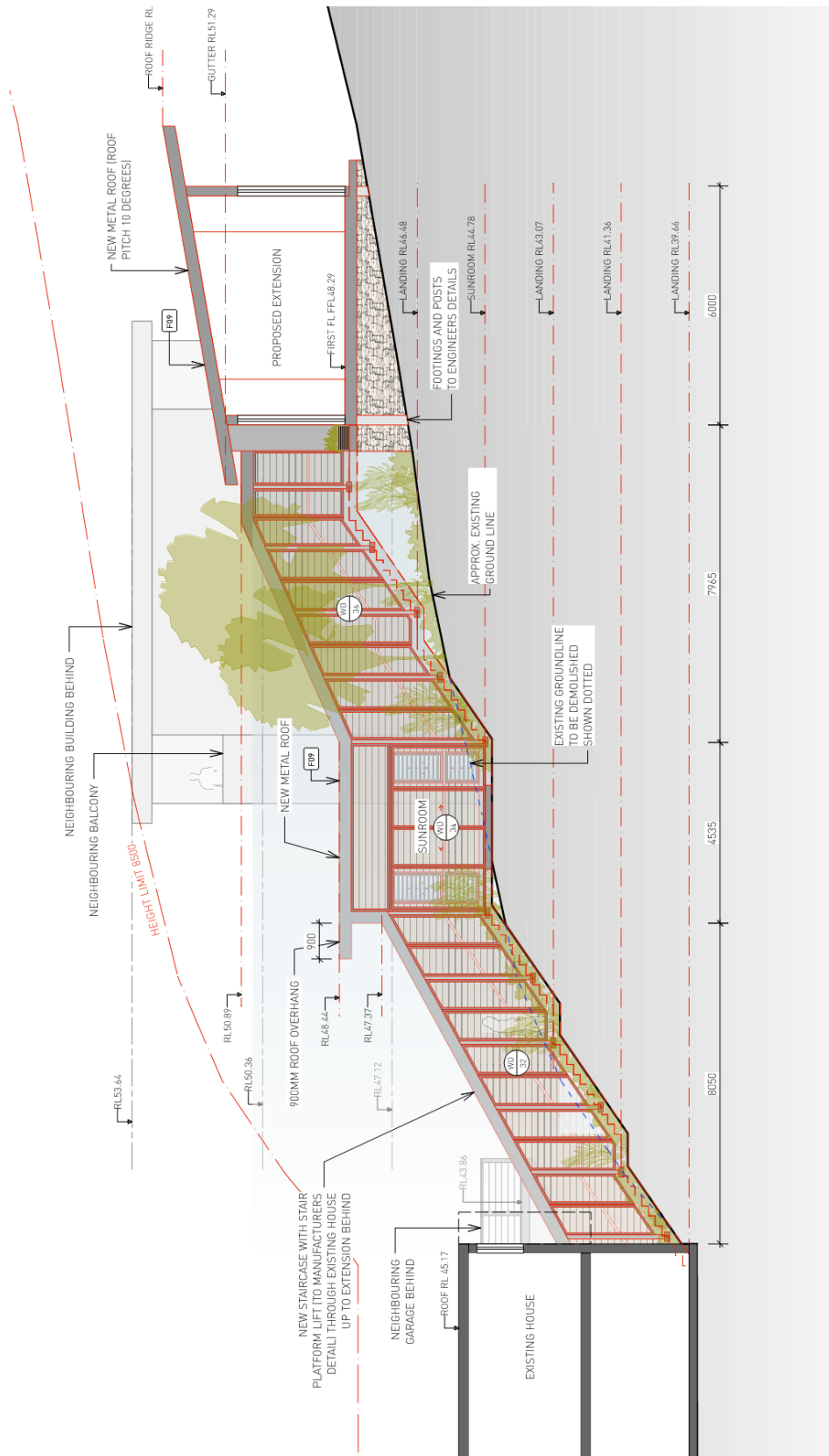
BASIS NOTES:

- HOT WATER SYSTEM TO BE GAS INSTANTANEOUS.
- ALL TOILETS, TAPS & SHOWER HEADS TO HAVE MINIMUM 3-STAR WATER RATING.
- NEW LIGHTS TO BE MIN. 40% FLUORESCENT/LED
- NEW SUSPENDED FLOOR TO HAVE MIN. R-VALUE OF 150.
- NEW EXTERNAL WALLS TO HAVE MIN. R-VALUE OF 1.70.
- NEW DOORS TO BE GLAZED IN ACCORDANCE WITH GLAZING SCHEDULE 1.
- NEW WINDOWS TO BE GLAZED IN ACCORDANCE WITH GLAZING SCHEDULE 1.

GENERAL NOTES:

1. ALL LANDSCAPING IS TO BE MANAGED IN ACCORDANCE WITH THE RECOMMENDATIONS IN THE BUSHFIRE REPORT, THE ECOLOGICAL STUDY AND ARBORICULTURAL ASSESSMENT, AS WELL AS TO THE LANDSCAPING PLAN.

DEMOLISHED	EXISTING STRUCTURE	NEW STRUCTURE
		



BASIC NOTES:

- REFER AND COMPLY WITH CERTIFICATE.
- HOT WATER SYSTEM TO BE GAS INSTANTANEOUS.
- NEW EXTERNAL WALLS TO HAVE MIN. R-VALUE OF 1.50.
- NEW SUSPENDED FLOOR TO HAVE MIN. R-VALUE OF 1.50.
- NEW PITCHED ROOF TO HAVE MIN. 100MM FOIL BACKED INSULATION, CEILING R1.24 UPI.
- WINDOWS TO BE PLACED IN ACCORDANCE WITH GLAZING SCHEDULE.
- ALL LANDSCAPING IS TO BE MANAGED IN ACCORDANCE WITH THE RECOMMENDATIONS IN THE BUSHFIRE REPORT, THE ECOLOGICAL STUDY AND ARCHAEOLOGICAL ASSESSMENT, AS WELL AS TO THE LANDSCAPING PLAN.

DEMOLISHED
EXISTING STRUCTURE
NEW STRUCTURE

DEVELOPMENT APPLICATION

BUILDING STUDIO

PROPOSED ELEVATIONS

DA470

10/11/17

73 Marine Parade, Avalon NSW 2107

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S. Rosen

Client

Alterations & Additions to Existing Dwelling

interior

design

architecture

concept

Scale 1:1000GA3

0 1 2 3 4 5m

ITEM 3.2 **N0316/17 - 2069 PITTWATER ROAD BAYVIEW - NEW
DWELLING AND POOL****REPORTING MANAGER** **Matthew Edmonds****TRIM FILE REF** **2018/213946****ATTACHMENTS** 1 [↓](#) **Assessment Report**
2 [↓](#) **Site and Elevation Plans****PURPOSE**

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Application N0316/17 for a new dwelling and pool at 2069 Pittwater Road, Bayview NSW 2101 (Lot 6Y DP 411732), subject to the outlined in the report.

SUBJECT: N0316/17 – 2069 Pittwater Road, Bayview NSW 2101 (Lot 6Y DP 411732) New dwelling and pool

Determination Level: Development Determination Panel

SUMMARY OF RECOMMENDATION: SUBJECT TO CONDITIONS

REPORT PREPARED BY:	Tyson Ek-Moller
APPLICATION SUBMITTED ON:	20 July 2017
APPLICATION SUBMITTED BY:	Millbrook Homes Pty Ltd PO Box 7390 BAULKHAM HILLS NSW 2153
OWNER(S):	Andrew Jerome Springer Clare Emily Springer
NUMBER OF SUBMISSIONS	Two (2)
COST OF WORKS	\$1,577,691

1.0 ISSUES:

Pittwater Local Environment Plan 2014

- Clause 4.3 Height of Buildings
- Clause 4.6 Exceptions to Development Standards

Pittwater 21 Development Control Plan

- A4.4 Church Point Locality
- C1.3 View Sharing
- C1.5 Visual Privacy
- D4.1 Character as viewed from a public place
- D9.9 Building Envelope

2.0 SITE DETAILS

The subject site is identified as 2069 Pittwater Road, Bayview (Lot 6Y, DP 411732). The site is an irregularly-shaped allotment which progressively widens from the front to the rear boundary. The primary boundary is oriented towards the northeast and adjoins the Pittwater Road road reserve; the rear and northwest side boundaries adjoin residential allotments and the southeast side boundary adjoins a public walkway. The area of the allotment is approximately 1476.6m², and the site contains a rear-to-front slope of approximately 10m (the slope is mostly contained within the rear half of the site, with the front being relatively level). Development on the site includes a two-storey dwelling house.

The subject site is within an E4 Environmental Living zone, and all adjoining sites are also E4 zoned. There are also a number of other zone boundaries within the surrounding area that are as follows:

- RE1 Public Recreation zones are located approximately 20m northeast, 200m southeast and 260m north of the subject site at their nearest respective points.
- E2 Environmental Conservation zones are located approximately 40m north and northeast of the subject site at their nearest respective points.
- A W2 Recreational Waterways zone is located approximately 40m north of the subject site.

- A W1 Natural Waterways zone is located northeast of the subject site, and is approximately 110m northeast of the subject site at its nearest point.
- An R5 Large Lot Residential zone is located southeast of the of the subject site, and is approximately 160m southwest of the subject site at its nearest point.



Figure 1: An aerial photograph of the subject site (outlined by the yellow border) and the immediate surroundings (Nearmap, 2017).



Figure 2: A panoramic photograph of the subject site from Pittwater Road.

The site is flood prone (subject to H3 and H5 risk categories), estuarine hazards (tidal inundation), a geotechnical (H1) hazard, Class 2 and 5 acid sulphate soils and Fauna/Flora Category 2 (fragmented bushland) considerations. The subject site does not contain a heritage item nor is it within a heritage conservation area; the nearest heritage item (Item No. 2270407, Bayview Yacht Racing Association) is approximately 25m north of the subject site.

Development on the southern side of Pittwater Road within the immediate area consists predominantly of low-density residential development (i.e. detached dwelling houses and associated structures such as pools, outbuildings, etc.). Development on the northern side of Pittwater road contains the Bayview Yacht Racing Association site, public carparks and waterfront public recreational areas.

An inspection of the subject site was undertaken by the assessing officer on 14 September 2017. This inspection confirmed the existing layout of the site is consistent with the submitted plans. No significant issues were identified.

3.0 PROPOSAL IN DETAIL

The subject development application seeks consent for the construction of a three storey dwelling house, a swimming pool and associated civil and landscaping works. Demolition of the existing dwelling is not proposed, and would be subject to the approval of a separate development application.

4.0 BACKGROUND

4.1 Site background:

Date	Comments
02/06/1992	Building Application No. 0019303 approved.
08/05/2017	Building Certificate No. BC0033/17 issued for eastern side, rear and front boundary fencing and sliding gate
20/07/2017	Subject development application lodged.

4.2 Application history:

Date	Comments
20/07/2017	Subject development application lodged.
14/09/2017	Site inspection undertaken
31/10/2017	Request for additional information sent to the applicant.
18/12/2017	Additional information received.
02/02/2018	Additional information received.

5.0 NOTIFICATION

5.1 Notification

The subject development application was notified in accordance with Council's notification policy. The notification period commenced on 24 July 2017 and ended on 9 August 2017; procedures associated with this process included the postage of notification letters to the owners of surrounding properties and the erection of a notification sign at the front of the property.

Correspondence confirming that the notification sign was erected was not received until 26 July 2017, therefore the notification period was extended until 11 August 2017.

In response, Council received two (2) submissions containing three (3) signatures. Both submissions objected to the proposal.

The subject application was not renotified following the submission of additional information, though the authors of both submissions were made aware of the amended information via email. An addendum to one of the original submissions was subsequently received.

5.2 Addresses of objectors

The physical addresses of submissions are as follows:

- 2071 Pittwater Road, Bayview
- 32 Kananook Avenue, Bayview



Figure 3: Location of the subject site (outlined by the yellow border) in relation to sites from which submissions were received (outlined by green borders).

5.3 Issues raised by submissions

Issues raised by submissions are as follows:

- The existing dwelling is of architectural significance and is of a scale that is sensitive to the natural and built environments. The proposed dwelling would have a larger bulk and scale and would be moved 5 metres closer towards the rear of the site; this would have adverse impacts on the adjoining site to the rear of the subject site.
- View sharing impacts.
- Solar access impacts.
- Visual privacy impacts.
- Noise impacts (specifically noise created by plant equipment and demolition/construction).
- Placement of air conditioning units on the roof.
- The proposed development is inconsistent with the objectives of the E4 zone and does not provide for a wildlife corridor.
- The current owners have a history of disregarding the requirements of the E4 zone, with previous works limiting the movement of species through the area.
- The development proposes bulk and scale that is so large as to be at odds with the requirement for such development to be at a "human scale". The dwelling would also not be low impact development and would dominate the environment.
- Substantial tree removal would remove vegetation screening and increase the visual impact of the development.
- The flood risk assessment is inadequate as the shelter in place requirement assumes that flooding would not affect the structural integrity of the building; no discussion has been had with neighbours in the event that the site needed to be evacuated through adjoining sites.
- Location of the proposed swimming pool would adversely affect the visual privacy of the adjoining site.
- The submitted arborist report fails to address native trees on adjoining sites that are in close proximity to shared boundaries with the subject site. Impacts on such trees have not been addressed.

- The existing dwelling has significant architectural merit, and the design of the proposed dwelling would be inconsistent with the design principles associated with the original dwelling.
- The proposed retaining walls on the western boundary would have a nil setback; this would result in privacy impacts and the potential for adverse impacts on trees within 2071 Pittwater Road as a consequence of works and sub-ground drainage. A 500mm setback of this wall is therefore requested. **Note:** The original submission made reference to "a masonry structure" within the northwest corner of the site; a discussion with the author of the submission indicated that this was the retaining wall that was detailed in the addendum to the submission.
- The submitted landscape plan lacks detail.
- Dilapidation reports addressing adjoining sites are requested in the event that the subject application is approved.

5.4 Responses to submissions

Issues raised by submissions are as follows:

Issue	Assessment and comment
The existing dwelling is of architectural significance and is of a scale that is sensitive to the natural and built environments. The proposed dwelling would have a larger bulk and scale and would be moved 5 metres closer towards the rear of the site; this would have adverse impacts on the adjoining site to the rear of the subject site.	The proposed dwelling would be larger than the existing dwelling, though the size and scale of the proposed development would be mostly consistent with applicable development standards and controls. While the building platform would be moved closer towards the rear boundary, it would continue to comply with rear setback requirements. Higher elevations towards the rear of the site would also likely be a more suitable area for new development, noting that lower elevations towards the front of the site are flood prone and affected by Class 2 Acid Sulphate Soils. The proposed development would also be generally consistent with the existing and desired character of the surrounding area.
View sharing impacts	Refer to Part 7.5B of this report for a detailed assessment of Part C1.3 (View Sharing) of Pittwater 21 DCP.
Solar access impacts	Refer to Part 7.5A of this report for comments regarding Part C1.4 (Solar Access) of Pittwater 21 DCP.
Visual privacy impacts	Refer to Part 7.5B of this report for an assessment of Part C1.5 (Visual Privacy) of Pittwater 21 DCP.
Noise impacts (specifically noise created by plant equipment and demolition/construction).	Noise generation activities (related to construction and ongoing use of the site) would be subject to conditions if approved. Demolition activities are not proposed and would be subject to separate consent.
Placement of air conditioning units on the roof.	The section plans indicate that air conditioning units would be placed within the ceilings. A condition is recommended to prevent the placement of plant equipment on the roof.
The proposed development is inconsistent with the objectives of the E4 zone and does not provide for a wildlife corridor.	Refer to the assessment of zone objectives within Part 7.4 of this report.
The current owners have a history of disregarding the requirements of the E4 zone, with previous works limiting the movement of species through the area.	The previous unauthorised fence was the subject of an approved Building Certificate. (BC0033/17) and is not applicable to this assessment. New structures would be subject to conditions to ensure that the design of such structures permit the passage of wildlife where required.
The development proposes bulk and scale that is so large as to be at odds with the requirement for such development to be at a "human scale". The dwelling would also not be low impact development	As indicated below, the proposed development would be sufficiently set back from public areas and would be consistent with the existing and desired character of the area.

and would dominate the environment.	
Substantial tree removal would remove vegetation screening and increase the visual impact of the development.	The applicant proposes to remove 25 trees and retain a further 22. A number of trees would be removed from the southeast corner of the site. Of the 25 trees proposed to be removed, 22 of those are bangalow palms; such trees contain high canopies that in their current form do not screen the existing dwelling and would be unlikely to significantly screen the proposed dwelling (refer to figures 4 and 5).
The flood risk assessment is inadequate as the shelter in place requirement assumes that flooding would not affect the structural integrity of the building; no discussion has been had with neighbours in the event that the site needed to be evacuated through adjoining sites.	In the event that the application is approved, recommended conditions would require that the dwelling be constructed using flood compatible techniques and materials. The applicant's flood risk assessment relies upon the dwelling serving as a shelter in place, and does not rely upon evacuation through surrounding sites or areas.
Location of the proposed swimming pool would adversely affect the visual privacy of the adjoining site.	Since the receipt of this submission, the location has been relocated so that it would not be adjacent to the dwelling on the adjoining site (2071 Pittwater Road). Such privacy matters have subsequently been resolved.
The submitted arborist report fails to address native trees on adjoining sites that are in close proximity to shared boundaries with the subject site. Impacts on such trees have not been addressed.	Concerns regarding impacts on trees on adjoining sites have not been raised by Council's biodiversity officer. Conditions are recommended that would require a project arborist to be onsite during excavation works and which limit what works may be done on/around roots of trees that have not been approved for removal.
The existing dwelling has significant architectural merit, and the design of the proposed dwelling would be inconsistent with the design principles associated with the original dwelling.	The existing dwelling has not been identified as an item of heritage significance; any design merit associated with the existing dwelling is irrelevant to the planning assessment.
The proposed retaining walls on the western boundary would have nil setback; this would result in privacy impacts and the potential for adverse impacts on trees within 2071 Pittwater Road as a consequence of works and sub ground drainage. A 500mm setback of this wall is therefore requested.	There is no identifiable requirement for the placement of a retaining wall on the northwest side boundary. A condition has therefore been recommended that would require the wall to be set back 1 metre from the boundary, with the area between the boundary and wall to form a landscaped area. A further condition is recommended for a project arborist to be on site to oversee excavation works.
The submitted landscape plan lacks detail.	The submitted information provided a sufficient level of detail for the application to be assessed and supported, subject to conditions.
Dilapidation reports addressing adjoining sites are requested in the event that the subject application is approved.	Council's Development Engineer has recommended that pre and post construction dilapidation reports be undertaken, and are subject to conditions.

6.0 REFERRALS:

6.1 Internal referrals:

Note: Detailed comments from Council officers are contained within Part 7 of this report.

Officer	Comments
Development Engineer	Recommendation: Supported, subject to conditions.
Coast and Estuary	Recommendation: Supported.

	<p>Additional comments: <i>"The property at 2069 Pittwater Road, Bayview has been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. The Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to development proposed at the site.</i></p> <p><i>Based upon a desktop assessment of the foreshore type and level, an estuarine planning level (EPL) of RL 2.72m AHD has been adopted by Council for the subject site. Due to the setback distance of proposed development on the site from the foreshore (over 40.0m) the EPL is reduced to RL 2.23m AHD once the reduction factor has been applied. As the lowest FFL of the proposed development (the garage) is shown as RL 3.328m AHD i.e. above the EPL, the proposed development satisfies the requirements of the Estuarine Risk Management Policy for Development in Pittwater and associated B3.7 Estuarine Hazard Controls for low density residential development."</i></p>
Flooding	<p>Recommendation: Supported, subject to conditions.</p> <p>Additional comments: <i>"The proposed development is supported subject to conditions.</i></p> <p><i>The Flood Planning Level (FPL) varies over the property as per the Flood Risk Assessment Report.</i></p> <p><i>The FPL is based on overland flow from the south south east.</i></p> <p><i>Note that if this level is exceeded in any location by the Estuarine Planning Level (EPL), then the EPL is to be taken as the Flood Planning Level.</i></p> <p><i>The minor excavation works proposed in the Flood Risk Assessment Report to compensate for the 1.5m³ loss of flood storage are considered to be reasonable and practical."</i></p>
Environmental Health	<p>Recommendation: Supported, subject to conditions.</p> <p>Additional comments: <i>"Based on the lab result of the soil test shows exceedance to the criteria for TAA (acidity present in the soil prior to oxygen exposure) and TPA (acidity present in the soil prior to after oxygen exposure), however due to the low SPOS reading (acidity formed from sulfur and oxygen exposure) the likelihood of oxygen increasing the acidity is not significant and the risk is reduced.</i></p> <p><i>However due to the high acidity the report recommends to address this matter with a Construction Environmental Management Plan.</i></p> <p><i>Environmental health is satisfied with the report subject to the following conditions:</i></p> <p><i>1. Acid Sulphate Assessment</i></p> <p><i>Details and recommendations provided in the report titled Preliminary Acid Sulfate Soils Assessment: 2069 Pittwater Road, Bayview, NSW 2104 prepared by Canopy Enterprises ref no. BAPI17 166 dated November 2017 must be implemented to ensure risk to the Environment is minimised.</i></p> <p><i>Reason: to reduce the risk to the environment.</i></p> <p><i>2. Acid Sulfate Soil Management</i></p>

	<p>Any new information which comes to light during remediation, excavation or construction works which has the potential to alter previous conclusions about the uncovering of Acid Sulfate Soil must be notified to the Certifier as soon as reasonably practicable. This will also require an Acid Sulfate Soil Management Plan, including disposal of affected soil to an approved facility, to be submitted to the certifier, before work continues.</p> <p>Reason: To ensure potential Acid Sulfate Soil is appropriately managed."</p>																				
Natural Environment	<p>Recommendation: Supported, subject to conditions.</p> <p>Additional comments: "Natural Environment & Climate Change – Biodiversity Division, have no objection to approval subject to conditions, as recommended."</p> <p>"I have reviewed the Arborist's Addendum to her original report (where the pool was not proposed in current location) and her comments reflect my own concerns that the pool location will be directly under the canopy of the significant Spotted Gum tree.</p> <p>The canopy will shade the pool and drop constant debris (some of which could be potentially dangerous if the tree is not regularly deadwooded) making it a much less enjoyable experience for the property owner. This will also place pressure on Councils Tree Officers to allow excessive pruning of the tree to reduce this risk. Should this be the final pool location, conditions of consent around how much pruning will be allowable will need to be set as excessive pruning will only create denser foliage regrowth in the future and thus more issue for the residents.</p> <p>The calculation of the TPZ encroachment for the pool alone comes up at an acceptable 5.6%, however the dwelling veranda will also be located within the TPZ. The Arborist Report accurately discusses the fact that over excavation will be required for the pool wall thickness, decking piers, drainage and plumbing requirements."</p> <p>Also Refer to additional comments below.</p>																				
Heritage	<p>Recommendation: Supported</p> <p>Additional comments:</p> <table border="1"> <tr> <td>Application no.</td><td>N0316/17</td></tr> <tr> <td>Address</td><td>2069 Pittwater Road, Bayview</td></tr> <tr> <td>Planner</td><td>Tyson Ek Moller</td></tr> <tr> <td>Applicant</td><td>Millbrook Homes P/L</td></tr> <tr> <td>Details of proposal</td><td>New dwelling and pool.</td></tr> <tr> <td>Reason for referral</td><td>Referred due to location opposite heritage item known as "Bayview Yacht Racing Association Boatshed" (SHI 2270407)</td></tr> <tr> <td>Item(s) of significance</td><td>This is significant because : "The Bayview Yacht Racing Association (BYRA) building is a significant site to illustrate Pittwater's (and Sydney's) long and rich sailing history associated with the early development of Pittwater. The boatshed is one of the most intact remaining boatsheds of the early Pittwater sailing activities. The BYRA club has produced a number of state, national and world champions and is a friendly family club with a strong sense of community"</td></tr> <tr> <td>Statement of Effects</td><td>Statement refers to BYRA and indicates no impact on the item.</td></tr> <tr> <td>Site inspection</td><td>25/07/17</td></tr> <tr> <td>Conclusion</td><td>The proposal is for the demolition of the existing dwelling and construction of a new dwelling and pool. The proposed dwelling has a large setback from the Pittwater Road frontage. The heritage item is located across Pittwater Road and to the north</td></tr> </table>	Application no.	N0316/17	Address	2069 Pittwater Road, Bayview	Planner	Tyson Ek Moller	Applicant	Millbrook Homes P/L	Details of proposal	New dwelling and pool.	Reason for referral	Referred due to location opposite heritage item known as "Bayview Yacht Racing Association Boatshed" (SHI 2270407)	Item(s) of significance	This is significant because : "The Bayview Yacht Racing Association (BYRA) building is a significant site to illustrate Pittwater's (and Sydney's) long and rich sailing history associated with the early development of Pittwater. The boatshed is one of the most intact remaining boatsheds of the early Pittwater sailing activities. The BYRA club has produced a number of state, national and world champions and is a friendly family club with a strong sense of community"	Statement of Effects	Statement refers to BYRA and indicates no impact on the item.	Site inspection	25/07/17	Conclusion	The proposal is for the demolition of the existing dwelling and construction of a new dwelling and pool. The proposed dwelling has a large setback from the Pittwater Road frontage. The heritage item is located across Pittwater Road and to the north
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Site inspection	25/07/17																				
Conclusion	The proposal is for the demolition of the existing dwelling and construction of a new dwelling and pool. The proposed dwelling has a large setback from the Pittwater Road frontage. The heritage item is located across Pittwater Road and to the north																				

		east of the site. Given the large setback proposed, the proposal is considered to not impact upon the heritage item and its significance. The proposal can be supported by Strategic Planning (Heritage).
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6.2 External referrals:

None required.

7.0 STATUTORY AND POLICY CONSIDERATIONS

Applicable instruments and policies:

Where applicable, the following relevant state, regional and local instruments and policies apply:

- Environmental Planning and Assessment Act 1979 (the Act)
- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55)
- State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
- Pittwater 21 Development Control Plan (P21 DCP)

Tables of Compliance:

T - Can the proposal satisfy the technical requirements of the control?

O - Can the proposal achieve the control outcomes?

N - Is the control free from objection?

Y – Yes

N – No

N/A or -- Not applicable

7.1 Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Act No. 203			
Clause	Assessment and Comment	T	O N
147 Disclosure of political donations and gifts		Y	Y Y

7.2 State Environmental Planning Policies

The following SEPPs would be applicable to the proposed development and have been assessed as follows:

State Environmental Planning Policies (SEPPs)			
SEPP	Assessment and Comment	T	O N
SEPP (Infrastructure) 2007			
SEPP No. 55 – Remediation of Land	A review of the site history indicates that the subject site has been used for residential purposes for an extended period of time, and such uses and/or development are not typically associated with activities that would result in the contamination of the site. Further to the site review, submitted information and site inspections did not identify evidence of contamination. With consideration to the above, and assuming that recommended consent conditions and are satisfied, it is unlikely that the site is contaminated and would be therefore be suitable for the proposed development.	Y	Y Y
SEPP (Building Sustainability Index: BASIX) 2004)		Y	Y Y

7.3 Pittwater Local Environment Plan (PLEP) 2014

7.3A Permissibility:

The subject site is located within an E4 Environmental Living zone under Pittwater Local Environment Plan (PLEP) 2014. The proposed development is most appropriately described as "residential accommodation", and more specifically a "dwelling house". Dwelling houses are a form of development that is permissible with consent under PLEP 2014.

7.4B Zone objectives

The proposed development would satisfy the objectives of the E4 Environmental Living zone. A more detailed assessment of the zone objectives is contained within Part 7.4D of this report.

7.4C Assessment of LEP standards and requirements

Refer below to a table of compliance for applicable controls under the LEP.

Clause	Numerical Standard	Numerical Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
1.9A Suspension of covenants, agreements and instruments					
4.1 Minimum subdivision lot size					
4.2 Rural subdivision					
4.3 Building Height	Maximum allowable height: 8.5m	Maximum proposed height: 9.82m	N	Y	N
4.4 Floor Space Ratio					
4.6 Exceptions to development standards		Not provided	Y	Y	Y
5.4 Controls relating to miscellaneous permissible uses					
5.5 Development within the coastal zone					
5.6 Architectural roof features					
5.7 Development below mean high water mark					
5.8 Conversion of fire alarms					
5.10 Heritage conservation					
7.1 Acid Sulphate Soils		Refer to Environmental Health comments within Part 6 of this report.	Y	Y	Y
7.2 Earthworks		Development Engineer comments: "Earthworks for the development are to be carried out in line with the recommendations of the Geotechnical Hazard assessment report"	Y	Y	Y
7.3 Flood planning		Catchment Management Officer comments: "No flood related objections."			
7.4 Floodplain risk management					
7.5 Coastal risk planning					
7.6 Biodiversity					
7.7 Geotechnical hazards		Development Engineer comments: "The proposed works have been assessed in regard to the landslip hazard policy and found to achieve an acceptable risk rating."	Y	Y	Y
7.8 Limited development on foreshore area					
7.9 Residual lots					
7.10 Essential services			Y	Y	Y

Clause	Numerical Standard	Numerical Proposal	T	O	N
7.11 Converting serviced apartments to residential flat buildings					
7.12 Location of sex services premises					

7.4D Discussion of LEP issues:

Building height:

Clause 4.3 – Height of Buildings

Clause 4.6 – exceptions to Development Standards

Under Clause 4.3 of PLEP 2014, the site is subject to a height limit of 8.5 metres; the provisions of Clause 4.3(2D) of the LEP are not applicable to the proposal as the slope under the proposed building footprint would not exceed 30%. The subject application proposes a maximum building height of 9.82m. In accordance with the LEP definition for building height the height of the dwelling is to be measured from existing ground level. While the most levels have not been significantly excavated by earlier development, a portion of the proposed dwelling would be situated over part of the existing car parking area and an internal stairway connecting that car parking area with living areas within the existing dwelling. It is above these areas where the noncompliances are proposed.

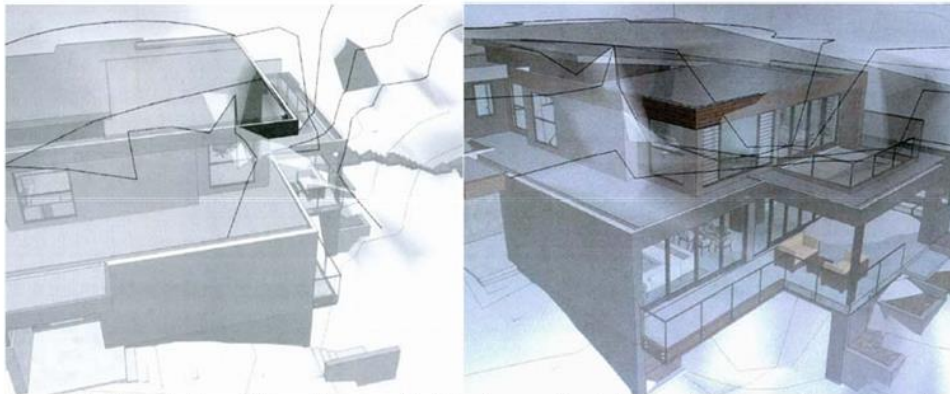


Figure 4: Extracts from information provided by the applicant from points above the eastern boundary denoting the locations of the proposed height breach.

The largest breach is situated within the northeast corner of the first floor and is approximately 2.1m long x 3.7m wide (approximately 1.3m long x 2.8m wide excluding the eaves). The maximum height of the breach would be 1.3m, or a 15.3% variation to the 8.5m height standard. The areas of noncompliance would be below the maximum ridge height of the dwelling, which is situated further towards the rear of the proposed dwelling.

Where the proposed works would be situated above the existing excavated stairway, the ground levels around that part of the development are considered to most appropriately convey the existing ground levels, rather than the stairway itself. This approach is consistent with the methods adopted by *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney and Anor* [2015] NSWLEC 1189 in the NSW Land and Environment Court (LEC); in such cases, the building height was taken to be measured from known existing natural ground levels which were then extrapolated across areas where development had already occurred.

With regard to the specifics of the subject application, utilisation of levels surrounding the stairway for the purposes of calculating the building height (as opposed to the levels of the stairway) would be more consistent with the objectives of the building height development standard, as the height, scale and visual impact is something that is gauged with existing ground levels that are viewed from surrounding areas, as opposed to internal levels.

Despite the above, the same approach could not be applied to the height noncompliance above the car parking area, as that noncompliance would affect an external part of the building; unlike internal excavation, building bulk scale and visual impact can be considered with regard to existing ground levels. Further, earlier modifications to this part the site would affect the ability to accurately extrapolate natural ground levels.

While it was not originally acknowledged, amended information included a statement seeking a variation of the height of building development standard pursuant to clause 4.6 of PLEP 2014. This statement (prepared by Turnbull Planning International and dated 24 November 2017) was written with regard to case law established by the NSW LEC and the guidelines of the NSW Department of Planning and Environment. This statement concluded that there are sufficient planning grounds to vary the building height standard.

The reasonableness of the proposed building height variation is considered with regard to clause 4.6 of PLEP 2014 below.

Development standard to be varied:

The applicant seeks to vary the 8.5m height limit imposed by clause 4.3 (Height of Buildings) of PLEP 2014; as building height is identified by the *Environmental Planning and Assessment Act 1979* as a development standard, the provisions of clause 4.6 (Exceptions to Development Standards) are applicable.

As detailed above, the plans propose a maximum building height of 9.82m metres, which is a 15.3% variation to the 8.5m height standard. The majority of the proposed dwelling would comply with the standard, with the proposed breach to occur within the top northeast corner of the proposed dwelling's first floor; the breach of the standard would occur below the maximum proposed ridge height, which would be located towards the south (i.e. rear) of the proposed dwelling.

Pursuant to clause 4.6(2) of PLEP 2014, consent may be granted for development even though the development would contravene a development standard prescribed by an environmental planning instrument. However, pursuant to clause 4.6(4), consent can only be granted if Council is satisfied that the applicant's written submission on the matter is well founded and if the proposal is in the public's interest by being consistent with the objectives of the specific development standard and the relevant zoning. With regard to 4.6(4)(b) of PLEP 2014, Planning Circular PS 18-003 (dated 21 February 2018), advises that the concurrence of the Secretary may not be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is greater than 10%. Notwithstanding this, the Secretary has agreed that in specific circumstances Northern Beaches Council is exempted from the requirement to refer such development applications to the Independent Assessment Panel where variations to the building height standard exceed 10%. In this regard, given the consistency of the variation with the objectives of the zone, the concurrence of the Secretary for the variation to the Height Standard would be assumed.

Is compliance unreasonable or unnecessary in the circumstances of the case?

Clause 4.6 – Exemptions to development standards

In accordance with the NSWLEC decision in *Wehbe v Pittwater Council*, a way that strict compliance can be seen to be unreasonable and unnecessary is if it can be demonstrated that the objectives of the standard would be achieved, despite the proposed height non-compliance. The objectives of the building height development standard are individually considered in respect of the proposed development, as follows;

<p><i>(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality</i></p> <p>The desired future character statement for the Church Point locality identifies that the area is to remain a low density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape. Such development is to also maintain a building height limit below the tree canopy, with bulk and scale to be minimised. Views from buildings shall be maintained below tree canopy levels capturing spectacular views up the Pittwater waterway. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.</p> <p>The proposed development would broadly satisfy most of the requirements outlined above. The proposed dwelling would be set back at higher parts of the site so that it is clear of flooding hazards that affect lower parts of the site. Aside from the noncomplying element the majority of the proposed dwelling would comply with the height standard, and the entirety of the building would be below the surrounding tree canopies. Facade modulation and shade elements are also proposed and would be particularly evident on elevations addressing public areas. Aside from excavation to permit the construction of the garage and swimming pool, the proposed dwelling would be stepped up the slope at the rear of the site.</p> <p>As indicated above however, the desired characteristics of the locality seek for dwellings to be no higher than two storeys in any one place; part of the proposed dwelling would be a three storey structure (i.e. two residential levels above a garage level). It is however recognised that topographical constraints within the locality may affect the ability of new dwellings to be designed so that they are a maximum of two storeys in any one place. The proposed design is considered to be an appropriate response to the constraints of the site, namely the considerable slope at the rear of the site, the placement of the current driveway and associated excavation.</p>
<p><i>(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development</i></p> <p>While the proposed height and scale of the dwelling would be considerably larger than the dwelling it would replace, it would be consistent with the locality. While the height and scale of residential development varies throughout the area, there are a number of large (i.e. three plus storey) residential structures both within the surrounding area; examples of such development within the immediate surroundings includes 2047, 2053, 2073 and 2085 Pittwater Road (also see Figure 2 above).</p>
<p><i>(c) to minimise any overshadowing of neighbouring properties</i></p> <p>An assessment of Part C1.4 (Solar Access) of Pittwater 21 DCP (refer to Part 7.5 of this report) indicates that the proposed development would comply with development controls, and would not unreasonably overshadow surrounding properties.</p>
<p><i>(d) to allow for the reasonable sharing of views</i></p> <p>An assessment of Part C1.3 (View Sharing) of Pittwater 21 DCP (refer to Part 7.5 of this report) indicates that the proposed development would likely have a considerable impact on views from the site immediately to the rear of the subject site (32 Kananook Avenue). The view loss assessment found that such impacts are considered to be reasonable, as the location of the building footprint is limited by hazards affecting the site and further excavation to reduce the building height would be contrary to applicable development objectives.</p> <p>It should be noted that the location of the proposed height noncompliance would be centrally located at the front of the proposed dwelling below the maximum ridge height that is further towards the rear of the dwelling; the proposed height noncompliance is therefore unlikely to contribute to the loss of views from the adjoining property.</p>
<p><i>(e) to encourage buildings that are designed to respond sensitively to the natural topography</i></p> <p>The proposed garage, storage area and internal connecting stairway would be excavated into the site; the placement and associated excavation of such facilities are considered to be appropriate given existing modifications to the site and flooding</p>

hazards forward of the proposed building platform. The residential levels above would generally respond to the natural topography of the site, with excavation of such levels to be mostly limited to the rear northwest area of the proposed building platform.
<i>(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items</i>
The proposed works would be unlikely to have an adverse visual impact upon the natural environment, or any heritage items of conservation areas.

With regard to the above, the proposed development is considered to be consistent with the objectives of the standard.

Are there sufficient environmental planning grounds to justify the proposed contravention of the development standard?

The objectives of clause 4.6 of PLEP 2014 are to provide an appropriate degree of flexibility in applying certain development standards to particular development, to achieve better outcomes for and from development. It is agreed with the applicant's variation request that the noncompliance would arise from the dwelling being situated over an existing building footprint that has been undercut and excavated, and that compliance with the standard is affected by the sloping topography of site and the layout of the existing building platform.

In the circumstances of the subject application, amendments to achieve strict compliance with the 8.5m height limit would be unlikely to achieve a better outcome for the site. Amendments to the design would be unlikely to further reduce any impacts on surrounding sites. Further, Due to the significant front setback (51.597m to the area of noncompliance), the existing and significant treeline along the southeast boundary adjacent to the public walkway and the high level of articulation that is proposed along the front and southeast elevations, it is unlikely that changes to attain compliance would be perceived from the public domain.

Is the proposal in the public interest?

A development is seen to be in the public's interest if it is consistent with the objectives of the development standard and the zone in which the particular development is carried out. As identified above, the proposed development is seen to be consistent with the objectives of the building height development standard. The proposed development is also considered to be consistent with the objectives of the E4 Environmental Living zone as follows:

<i>To provide for low impact residential development in areas with special ecological, scientific or aesthetic values.</i>
The proposed residential dwelling has been designed with regard to the ecological and aesthetic values of the area. The proposed development would be unlikely to have significant identifiable impacts on items of ecological significance, and would reasonably retain the aesthetic values of the area.
<i>To ensure that residential development does not have an adverse effect on those values.</i>
The proposed development would not have unreasonable adverse impacts on such values. Council's biodiversity officer has confirmed that subject to conditions, the proposed development should not have an adverse impact on environmental values. This planning assessment has also found that the proposed development is unlikely to significantly affect the amenity of surrounding sites. While the proposed development would adversely affect the views of the site immediately to the rear, the view sharing assessment concludes that such impacts would not be unreasonable with regard to the specifics of the proposal.
<i>To provide for residential development of a low density and scale integrated with the landform and landscape.</i>
The proposed development is for a form of low density residential development. The scale of the proposed dwelling would be consistent with surrounding residential development. The proposed development would also be appropriately integrated with the landform and would provide a sufficient landscaped area that is consistent with applicable development controls and outcomes.

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

Subject to conditions, the proposed development would retain and enhance riparian vegetation. While a submission has raised concerns about structures preventing the movement of animals throughout the area, such structures were assessed prior to the lodgement of the subject application and are therefore not applicable. Conditions are however recommended that would require any proposed structure to permit for the passage of wildlife where permitted.

In summary, the proposal would meet the objectives of the E4 Environmental Living zone, and the development would be in the public interest.

Conclusion:

Strict compliance with the 8.5m building height limit is seen to be both unreasonable and unnecessary in the circumstances of the subject application, and there are sufficient environmental planning grounds to justify contravention of the development standard.

Subject to recommended consent conditions, the resultant development is seen to meet the objectives of the building height development standard, the E4 Environmental Living zone and both the existing and desired future character of the Church Point and Bayview locality.

The Applicant's submission pursuant to clause 4.6 of PLEP 2014 is considered to be well-founded, and the proposed variation to the 8.5m height limit is warranted in this particular instance.

7.5 Pittwater 21 Development Control Plan

7.5A Assessment of DCP controls

Refer below to a table of compliance for applicable controls under the DCP; more detailed assessments and elements of noncompliance are also assessed and discussed in depth below.

Clause	Numerical Standard	Numerical Proposal	T	O	N
Section A Shaping Development in Pittwater					
A1 Introduction					
A1.7 Considerations before consent is granted			Y	Y	Y
A4 Localities					
A4.4 Church Point Locality			N		N
Section B General Controls					
B1.1 Heritage Conservation Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014					
B1.2 Heritage Conservation Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological site			Y	Y	Y
B1.3 Heritage Conservation General					
B1.4 Aboriginal Heritage Significance		The site is highly modified. Conditions recommended.	Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y
B3.2 Bushfire Hazard					
B3.3 Coastline (Beach) Hazard					
B3.4 Coastline (Bluff) Hazard					
B3.6 Contaminated Land and Potentially Contaminated Land		Refer to the assessment of SEPP 55 within Part 7.2 of this report.	Y	Y	Y
B3.7 Estuarine Hazard Low density residential		Refer to Coast and Estuary comments within Part 6 of this report.	Y	Y	N
B3.11 Flood Prone Land		The subject application was lodged prior to DCP amendments which consolidated earlier flooding controls into Part B3.11 of	Y	Y	N

		the DCP. Refer to Part 6 of this report and the assessments of Parts B3.13, B3.16, B3.19 and B3.22 below for additional comments.			
B3.13 Flood Hazard Flood Category 1 Low Hazard Shop Top Housing, Business and Industrial Development		Catchment Management officer comments: <i>"The life hazard category on the front half of the property is H3 H4. However the ground floor is well above the 1 in 100 year flood level, and the first floor is well above the PMF level and so is adequate for sheltering in place. No flood related objections."</i> Also refer to additional comments from Council's Catchment Management officer within Part 6 of this report.	Y	Y	N
B3.16 Flood Hazard Flood Category 1 High Hazard Low Density Residential		Catchment Management officer comments: <i>"No flood related objections."</i>	Y	Y	N
B3.19 Flood Hazard Flood Category 1 High Hazard Other Development		Catchment Management officer comments: <i>"No flood related objections."</i>	Y	Y	N
B3.20 Flood Hazard Flood Category 1 High Hazard Subdivision					
B3.21 Flood Hazard Flood Category 2 All Development except residential accommodation (with the exception of shop top housing, seniors housing and group homes)					
B3.22 Flood Hazard Flood Category 3 Overland Flow Path Major		Catchment Management officer comments: <i>"No flood related objections."</i>	Y	Y	N
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land		Natural Environment officer comments: <i>"Natural Environment & Climate Change – Biodiversity Division, have no objection to approval subject to conditions, as recommended."</i>	Y	Y	N
B5.1 Water Management Plan					
B5.3 Greywater reuse					
B5.4 Stormwater Harvesting			Y	Y	Y
B5.5 Rainwater Tanks Business, Light Industrial and Other Development					
B5.7 Stormwater Management On Site Stormwater Detention		Development Engineer comments: <i>"Due to the site location and whilst the subject is shown as requiring OSD the recommendation is that the site not require OSD but the reuse factor be increased to mitigate the removal of the OSD requirement."</i>	Y	Y	Y
B5.8 Stormwater Management Water Quality Low Density Residential			Y	Y	Y
B5.9 Stormwater Management Water Quality Other than Low Density Residential					
B5.10 Stormwater Discharge into Public Drainage System			Y	Y	Y
B5.11 Stormwater Discharge into Waterways and Coastal Areas					

B5.12 Stormwater Drainage Systems and Natural Watercourses					
B5.13 Development on Waterfront Land		Development Engineer comments: "Not waterfront land major works outside the 40 metre zone only access works to be within 40 metres of MHWL."	Y	Y	Y
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)					
B6.1 Access driveways and Works on the Public Road Reserve			Y	Y	Y
B6.2 Internal Driveways			Y	Y	Y
B6.3 Off Street Vehicle Parking Requirements	Required number of car parking spaces: A minimum of two off street car parking spaces are to be provided for each dwelling	Proposed number of car parking spaces: Minimum two (2) off street parking spaces proposed	Y	Y	Y
B6.5 Off Street Vehicle Parking Requirements Low Density Residential (Amended 14/11/15 See B6.3)					
B6.6 On Street Parking Facilities					
B6.7 Transport and Traffic Management					
B8.1 Construction and Demolition Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition Works in the Public Domain			Y	Y	Y
B8.6 Construction and Demolition Traffic Management Plan			Y	Y	Y
Section C Development Type Controls – C1 Design Criteria for Residential Development					
C1.1 Landscaping		Natural Environment officer comments: "Natural Environment & Climate Change – Biodiversity Division, have no objection to approval subject to conditions, as recommended."	Y	Y	N
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing			Y	Y	N
C1.4 Solar Access	Private Open Space (POS) for each dwelling and any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st. At least 50% of the glazed areas of windows to: • The principal living area of the proposal; and • Windows to the principal living area of adjoining dwellings, are to receive a minimum 3 hours sunlight between	The proposed development would overshadow surrounding sites on June 21 as follows: • A small proportion of the rear setback area of 32 Kananook Avenue at 9:00am; and • The shadow cast would likely affect the western elevation of the dwelling at 2065 Pittwater Road at 3:00pm. For the remainder of June 21, the proposed shadow cast would be self contained with the subject site and would affect part of the adjoining public walkway. The proposed development would permit a minimum of 3 hours solar access to dwellings and the private open	Y	Y	N

	9am and 3pm on June 21 st .	space on surrounding sites, and would therefore comply with Part C1.4.			
C1.5 Visual Privacy			N	Y	N
C1.6 Acoustic Privacy			Y	Y	Y
C1.7 Private Open Space	Minimum 80m ² of POS space to be provided with minimum dimensions of 3m Minimum 16m ² principal area (PPOS) with minimum dimensions of 4m and maximum 5% gradient	Minimum 320m ² POS area, inclusive of minimum dimensions and excluding swimming pool. A technical noncompliance is proposed in that the majority of POS area would be located within the front setback. Due to solar access and slope constraints within the rear setback however, the proposed location of the POS area is considered to be acceptable.	N	Y	Y
C1.9 Adaptable Housing and Accessibility					
C1.12 Waste and Recycling Facilities					
C1.13 Pollution Control		Refer to Part 6 of this report for comments relating to an objection regarding plant equipment.	Y	Y	N
C1.14 Separately Accessible Structures					
C1.16 Development ancillary to residential accommodation Tennis Courts					
C1.17 Swimming Pool Safety			Y	Y	Y
C1.19 Incline Passenger Lifts and Stairways					
C1.23 Eaves		Reduced/no eaves are proposed on parts of the side elevations. The contemporary design that is proposed is consistent with development in the surrounding area. As indicated by the submitted BASIX information, appropriate solar access/shading is also achieved. The outcomes of the control would therefore be met and the noncompliance is considered to be acceptable on merit.	N	Y	Y
C1.24 Public Road Reserve Landscaping and Infrastructure					
C1.25 Plant, Equipment Boxes and Lift Over Run		Refer to Part 5 of this report for comments relating to an objection regarding plant equipment.			N
Section D Locality Specific Development Controls – D4 Church Point Locality					
D4.1 Character as viewed from a public place			Y	Y	N
D4.3 Building colours and materials			Y	Y	Y
D4.5 Front building line	Minimum 10m, or established building line, whichever is greater	Proposed minimum front setbacks: • Minimum 35.3m (to pool) • Minimum 47.2m (to dwelling)	Y	Y	Y
D4.6 Side and rear building line	Required setbacks: • Side setbacks: o 2.5m on one side o 1m on the other side • Rear setbacks: o 6.5m	Proposed minimum setbacks: • Northwest side: o Minimum 2.563m (dwelling) o Minimum 1m (retaining wall) • Southeast side: Minimum 2.512m • Rear: o Minimum 7.292m (dwelling) o Minimum 6.5m (retaining wall)	Y	Y	N

		A response to the submission is contained within Part 5 of this report.			
D4.8 Building Envelope			N	Y	Y
D4.10 Landscaped Area Environmentally Sensitive Land	Minimum 60% of the site is to be landscaped (886.2m ² , based on a site area of 1477m ²)	Proposed landscaped area (including allowable variations): • Approx. 891m ² , or 60.3%	Y	Y	Y
D4.12 Fences – General		No new fences proposed. The applicant indicates that the front boundary fence may be "repaired and rejuvenated", though it is unclear what this may entail; conditions are recommended to ensure that any boundary fence works are consistent with controls.			N
D4.13 Construction, Retaining walls, terracing and undercroft areas		Refer to Part 5 of this report for submission comments regarding a boundary wall on the northwest side of the site. Otherwise subject to recommended conditions to ensure compliance with controls.	Y	Y	N

7.5B - Detailed assessments of relevant provisions within Pittwater 21 DCP

A4.4 Church Point and Bayview Locality and D4.1 Character as viewed from a public place

The proposed development is mostly consistent with the desired locality for the Church Point and Bayview locality as follows:

- The proposed development would be serviced by adequate infrastructure;
- Despite submissions indicating the contrary, the proposed development would propose height and scale that would be consistent with the surrounding area and which would be below the tree canopy. The building envelope would mostly comply with requirements within Part D of the DCP;
- High levels of articulation are proposed on elevations that address public areas (i.e. the front and east-side boundaries, and the proposed external colours/materials are consistent with DCP requirements. Significant front setbacks and the retention of most vegetation along the side boundaries should reduce the prominence of the proposed dwelling when viewed from Pittwater Road and/or waterway areas; and
- There would not be an unacceptable level of impact on local heritage items (refer to Strategic Planning comments above).

The proposed development would however be inconsistent with the desired requirement that residential buildings be no higher than two storeys in any one place, as part of the dwelling contains two residential levels above a semi-basement garage. As discussed within the assessment of Clauses 4.3 and 4.6 of the LEP (refer to Part 7.4 of this report), such an inconsistency would arise as a result of site constraints, namely the considerable slope at the rear of the site, the placement of the current driveway and associated excavation. The proposed design is also consistent with the existing character of the area, noting that there are number of dwellings fronting Pittwater Road that are more than two storeys in any one place (examples of which include 2047, 2053, 2073 and 2085 Pittwater Road; also see Figure 2).

Further to the above, elements of the proposal that are directly visible from public areas (i.e. Crescent Road) would satisfy the relevant requirements within Part D4.1 of the DCP by proposing varying methods of articulation. The proposed garage would also be recessed under the residential levels and would be less than 50% of the overall building frontage. The reflectivity of finishes and the obscuring of services would also subject to conditions to ensure compliance with applicable controls.

In summary, the proposal would broadly satisfy requirements relating to the desired character of the locality and the visual presentation of the development to public areas.

C1.3 View Sharing

Note: The proposed development would not affect views from public areas (i.e. the adjoining road reserve and public walkway), therefore such views have not been considered further.

As indicated within Part 2 of this report, both the subject site and surrounding area reside on a slope that falls in a south-to-north direction towards Pittwater. Following the receipt of submissions, site inspections were undertaken at both the subject site and surrounding sites from where submissions were received (note: one of the two submissions did not relate to view loss, therefore that inspection did not focus on view loss issues). It was considered likely that due to the topography of the area and the form of surrounding development, some dwellings on surrounding sites may have views of Pittwater and associated foreshore areas that could be affected by the proposed development.

Part C1.3 (View Sharing) of Pittwater 21 DCP requires that:

- *All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties;*
- *The proposal must demonstrate that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing;*
- *Where a view may be obstructed, built structures within the setback areas are to maximise visual access through the structure e.g. by the provision of an open structure or transparent building materials; and*
- *Views are not to be obtained at the expense of native vegetation.*

The proposed tree removal is required to facilitate the construction of the dwelling and would not be the result of the applicant attempting to obtain more significant views; the proposal would satisfy the fourth view-sharing requirement of the DCP as outlined above and will not be discussed further.

Further to the DCP controls above, advisory notes stipulate that:

- Where potential for view loss to adjoining developments exists, an assessment of the view loss (supported by a clearly documented photographic analysis shall be provided;
- Height poles should be erected to demonstrate the impact of the finished development on view lines with a statement to be provided by a Registered Surveyor certifying the height and location of the poles in relation to the proposed structures.

As reflected by submission, height poles were not initially erected by the applicant; it was arranged for height poles to be erected during the inspections of adjoining sites.

In determining the extent of potential view loss to adjoining and nearby properties, the four planning principles outlined within the NSW Land and Environment Court *Tenacity Consulting v Warringah Council* [2004] NSW LEC 140 have been considered.

1. Nature of the view to be affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic view (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:

Due to the topography of the area, significant views would be obtained from surrounding areas as follows:

- Sites fronting Pittwater Road:
The most significant views from these sites would be across Pittwater Road towards the north; these would incorporate views of Pittwater, Scotland Island and associated foreshore areas.
- Sites to the south of the subject site:
The most significant views from these sites would be towards the north; these would likely incorporate views of Pittwater, Scotland Island and associated foreshore areas. Due to the sloped topography and elevated location of these sites, such views would be obtained across sites immediately to the north (i.e. the sites fronting Pittwater Road). Due to vegetation on both these sites and sites to the north, such views are more likely to be considered as "partial" due to the filtering of such views by vegetation on these sites and those fronting Pittwater Road.
- 32 Kananook Avenue:
As with sites to the south of the subject site, significant views from this site are directed towards the north; these would likely incorporate views of Pittwater, Scotland Island and associated foreshore areas. Such views are considered as "partial", due to heavy filtering of such views by substantial vegetation and a thick tree canopy on the subject site (refer to figures 4 and 5).



Figure 4: A panoramic photo from the deck at the rear of the dwelling at 32 Kananook Avenue looking north towards the subject site.

2. The part(s) of the property from which the views are obtained

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

Comment:

- Sites fronting Pittwater Road:
The most significant views from these sites would be from the front of their respective dwellings. Some views may be obtainable across the front setbacks of adjoining sites.
- Sites to the south of the subject site:
The most significant views from these sites would likely be obtained from the rear of their respective dwellings.

- **32 Kananook Avenue:**
The most significant views from this property (at present) would be obtained from the main rear deck and large windows which adjoin this area. Development Consent No. N0506/16 approved the construction of a studio within the undercroft area, though works had not substantially commenced on this element at the time that the assessing officer visited the site. Some views are also obtainable from the private open space directly to the rear (see figure 5).



Figure 5: A panoramic photo taken at ground level at the rear of the dwelling at 32 Kananook Avenue, looking north towards the subject site.



Figure 6: A photo of the rear of the dwelling at 32 Kananook Avenue. The approved studio would be located under the deck.

3. The extent of the 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."

Note: While certified height poles were erected on the site and were observed by the assessing officer at the time of the inspection of the adjoining site, the thick treeline at the rear of the subject site affects accurate identification and placement of the height poles within photos taken from the rear of the dwelling at 32 Kananook Avenue. The images used above therefore do not include the locations of the poles.

Comment:

- 2071 Pittwater Road:
The front setback of the proposed dwelling would be considerably greater than the dwelling on this adjoining site. With regard to the above and observations made by the assessing officer during an inspection to that site, the proposed development is highly unlikely to significantly affect such views, and such impacts would likely be categorised as negligible.
- 2065 Pittwater Road:
The proposed development would be set substantially further forward than the dwelling at 2065 Pittwater Road. It was not possible to verify the views from the front of this site, however due to substantial vegetation along the subject site's southeast boundary and progressive stepping of the proposed dwelling's southeast side elevation, it is considered unlikely that the proposed development would substantially affect views. Such impacts would therefore likely be classified as minor
- 32 Kananook Avenue:
As indicated by Figure 4, the most significant views would be water views obtained from between the existing dwelling and gaps in the treeline at the rear of the subject site. While the height poles cannot be clearly identified by the photos within this report, the inspection by the assessing officer confirmed that it is highly likely that any water glimpses through this area would be obscured by the proposed development. While a substantial number of trees are proposed to be removed from the southeast corner of the site, due to retained vegetation along the southeast boundary and the orientation of views from this adjoining site, it is unlikely that the removal of such trees would compensate for views that would be removed by the proposed dwelling. With regard to the *Tenacity* classifications, such impacts are likely to be classified as severe to devastating.

4. The reasonableness of the proposal that is causing the impact

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

Comment:

With regard to the above, any impacts on sites to either side of the subject site are considered to be reasonable, given that the majority of the dwelling would comply with front and side setback requirements.

While the impacts on views from 32 Kananook Avenue would be substantial, they are not considered to be unreasonable. The proposed dwelling would mostly comply with locality-specific development controls; while a height noncompliance is noted, it would be centrally located within the proposed building footprint, towards the front of the dwelling below the maximum ridge height; the noncompliance would therefore be unlikely to significantly affect views. While a breach of the building envelope is noted on the southeast elevation, the location of the noncomplying area is surrounded by a thick tree canopy, a substantial proportion of which is to be retained; this noncompliance is therefore also unlikely to significantly affect views.

It is acknowledged that increases to the dwelling's height, bulk and scale (issues separately addressed by the owners of the adjoining site) would be primarily responsible for such impacts. The topography and limitations of the site would however substantially limit the locations and design options for a new dwelling, particularly at lower areas further towards the front boundary due to flooding, estuarine hazards and Class 2 acid sulphate soils within this area. Significant excavation into rear of the site to limit the height of the dwelling would also be contrary to the objectives of relevant development standards and the E4 zone. Further, as water glimpses from 32 Kananook Avenue are obtained through the underside of the tree canopy, any height increase and/or extension towards the front boundary (irrespective of the limitations outlined above) would likely have a similar impact on those water glimpses.

As also indicated with the assessment of the first *Tenacity* Principle, the proposed development would affect a "partial" instead of a more highly-valued "whole" view of Pittwater.

In summary, a submission from an adjoining sites expressed concerns regarding view loss. An assessment of potential view-sharing impacts from adjoining sites was undertaken in accordance with both the DCP and relevant Land and Environment Court Planning Principles. This assessment indicated that the proposed development would likely have a severe-to-devastating level of impact on views from both adjoining sites, however in accordance with the *Tenacity* principles and the limitations of the subject site, the levels of impact are considered to be reasonable.

C1.5 Visual Privacy

A submission has raised concerns regarding visual privacy; the submission indicates that no windows currently overlook the rear of 32 Kananook Avenue, and that the proposal would result in windows 4, 5, 6, 7, 17, 18 and 19 overlooking the objector's site. Windows 4, 5, 6 and 7 would be on the ground floor while windows 17, 18 and 19 would be on the first floor. A response to such concerns is as follows:

Ground floor:

There would be three windows and a bi-fold door facing the rear boundary. The tops of these openings would be at an RL of approximately 9.144. Based on the submitted plans, the ground levels at the rear boundary directly to the rear of the proposed ground floor would be approximately RL8.11 to RL10.03, atop of which is a 1.8m fence. Both the sloped topography of the subject site and the fence would create a solid barrier that would extend approximately 760mm to 2.7m above the top of these openings; combined with landscaping within the rear setbacks of both the subject site and the objector's site, viewlines from these windows should be sufficiently screened.

First floor:

There would be three windows facing the rear boundary. Due to the height of the windows (between approximately 170mm and 900mm above the Finished Floor Level (FFL) of the first floor, these windows would not benefit from the screening that would be afforded to the ground floor. Regardless, all windows would be separated from the rear of the dwelling at 32 Kananook Avenue by approximately 30m which would be well in excess of the 9m screening requirements

within Part C1.5 of the DCP. Two of the three windows would also be associated with bedrooms that are not expected to be high-use areas. The third window would be associated with a passage way that would likely direct views towards the rear setback of 32 Kananook Avenue; while the separation distance between this window and the dwelling on the adjoining site would be 34m, as this would likely be a high-use area, a condition is recommended that would require the window to be screened or obscured.

With regard to the above and subject to the recommended condition, it is not anticipated that the proposed development would excessively or unreasonably affect the visual privacy of 32 Kananook Avenue.

The remainder of the dwelling should generally satisfy the visual privacy provisions of the DCP, by providing windows that would be approximately 9+ metres from dwelling at 2065 Pittwater Road (i.e. to the southeast). While there would be a number of openings that would address 2071 Pittwater Road (i.e. the northwest), the topography of the subject site would adequately screen ground floor windows and doors; the three forward-most windows of the first floor would contain screens and raised sill heights, while the northwest side elevation of the first floor balcony would be screened. The pool deck, while within 9m of the northwest boundary, would be adequately screened by existing landscaping treatments and the sloping topography within the northwest side of the subject site.

In summary, despite potential technical noncompliances on the northwest elevation the proposed development would generally satisfy the controls and outcomes of Part C1.5 of the DCP. While a submission is noted, the location and design of the dwelling should permit adequate separation and screening opportunities to prevent adverse visual privacy impacts on the site at 32 Kananook Avenue.

D9.9 Building Envelope

The proposed dwelling would mostly comply with the DCP building envelope. There would however be a breach of the envelope within the southeast corner of the dwelling; the maximum height of the breach would be approximately 1.9m, and would extend for most of the length of the southeast side of the wing that would occupy bedroom 2 (refer to figure 3, right).



Figure 7: An extract of the southeast elevation; the approximate area of the envelope breach is highlighted in red.

As there are no windows on the effected part of the southeast elevation there would be no visual privacy issues associated with the noncompliance. As assessed under Part C1.3 of the DCP, the proposed dwelling would comply with solar access requirements. As the location of the breach is both below the maximum ridge height of the dwelling and would be towards the rear of the building, therefore it is both unlikely to significantly affect views and or be highly visible from the adjoining road reserve and/or waterway areas. With regard to the above, the proposal would satisfy the outcomes of the control and is considered to be supportable on merit.

8.0 CONCLUSION

The subject development application proposes the construction of a dwelling house. The Development Application has been assessed in accordance with the provisions of applicable planning legislation, planning instruments and policies as listed within Part 7 of this report. Two submissions were received that raised a number of issues, which have been acknowledged and addressed within Parts 5 and 7 of this report.

This assessment has found that proposed development is mostly consistent with the relevant statutory and policy controls and outcomes (refer to relevant assessments above). While a variation is proposed to the building height standard, there are unlikely to be any adverse impacts associated with such a variation.

The assessment has found that impacts associated with the proposed development are both reasonable and acceptable, subject to recommended conditions of consent. As such, the proposal is recommended for approval.

RECOMMENDATION OF PLANNER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Application N0316/17 for a new dwelling and pool at 2069 Pittwater Road, Bayview NSW 2101 (Lot 6Y DP 411732), subject to the conditions of consent.

Report prepared by

Tyson Ek-Moller
PRINCIPAL PLANNER
DEVELOPMENT ASSESSMENT

Plans:

- Cover, prepared by Urban Harmony, Drawing No. 511.00, Job No. 511/16, Rev. DA.1, dated 18 December 2017
- Site Plan, prepared by Urban Harmony, Drawing No. 511.101, Job No. 511/16, Rev. DA.1, dated 18 December 2017
- Lower Ground Floor Plan, prepared by Urban Harmony, Drawing No. 511-102, Job No. 511/16, Rev. DA.1, dated 18 December 2017
- Ground Floor Plan, prepared by Urban Harmony, Drawing No. 511-103, Job No. 511/16, Rev. DA.1, dated 18 December 2017
- First Floor Plan, prepared by Urban Harmony, Drawing No. 511-104, Job No. 511/16, Rev. DA.1, dated 18 December 2017
- Roof Plan, prepared by Urban Harmony, Drawing No. 511-105, Job No. 511/16, Rev. DA.1, dated 18 December 2017
- Elevations 01, prepared by Urban Harmony, Drawing No. 511-106, Job No. 511/16, Rev. DA.1, dated 18 December 2017
- Elevations 02, prepared by Urban Harmony, Drawing No. 511-107, Job No. 511/16, Rev. DA.1, dated 18 December 2017
- Sections 01, prepared by Urban Harmony, Drawing No. 511-108, Job No. 511/16, Rev. DA.1, dated 18 December 2017
- Sections 02, prepared by Urban Harmony, Drawing No. 511-109, Job No. 511/16, Rev. DA.1, dated 18 December 2017
- Sections 03, prepared by Urban Harmony, Drawing No. 511-110, Job No. 511/16, Rev. DA.1, dated 18 December 2017
- Sections 04, prepared by Urban Harmony, Drawing No. 511-111, Job No. 511/16, Rev. DA.1, dated 18 December 2017
- BASIX, prepared by Urban Harmony, Drawing No. 511-112, Job No. 511/16, Rev. DA.1, dated 18 December 2017
- Window Schedule, prepared by Urban Harmony, Drawing No. 511-113, Job No. 511/16, Rev. DA.1, dated 18 December 2017
- Site Analysis Plan, prepared by Urban Harmony, Drawing No. 511.118, Job No. 511/16, Rev. DA.1, dated 18 December 2017
- Site Management Plan, prepared by Urban Harmony, Drawing No. 511.119, Job No. 511/16, Rev. DA.1, dated 18 December 2017
- Landscape Plan, prepared by Urban Harmony, Drawing No. 511.120, Job No. 511/16, Issue LS2, dated 18 January 2018
- Landscape Plan 2, prepared by Urban Harmony, Drawing No. 511.121, Job No. 511/16, Issue LS2, dated 18 January 2018
- Stormwater Management Drainage Plans, prepared by Northern Beaches Consulting Engineers, Drawing No. D01, Job No. 170502, Issue A, dated 6 June 2017
- Stormwater Management Drainage Plans, prepared by Northern Beaches Consulting Engineers, Drawing No. D02, Job No. 170502, Issue A, dated 6 June 2017
- Stormwater Management Drainage Plan and Details, prepared by Northern Beaches Consulting Engineers, Drawing No. D03, Job No. 170502, Issue A, dated 6 June 2017
- Contour Plan, prepared by Donovan Associates Job Ref. 14485/288950, Drawing No. 288950, dated 6 October 2016

Documents:

- BASIX Certificate No. 801582S_02, prepared by Red Road Engineers Pty Ltd
- Aboricultural Impact Assessment Report & Method Statement, prepared by Margot Blues, dated 20 April 2017
- Addendum - Arboricultural assessment of pool and landscaping development around T1, prepared by Margot Blues, dated 29 January 2018
- Flood Risk Assessment, prepared by Northern Beaches Consulting Engineers, Job No. 170502, dated 5 June 2017
- Preliminary Acid Sulfate Soils Assessment, prepared by Canopy Enterprises, Ref. BAPI17-166, dated 22 November 2017
- Landslide Risk Assessment, prepared by AW Geotechnical Pty Ltd, Ref. AWG43928, dated 20 July 2017
- Allowable Bearing Pressures, prepared by AW Geotechnical Pty Ltd, Ref. AWG43928, dated 26 August 2016
- Electrical Conductivity Testing, prepared by AW Geotechnical Pty Ltd, Ref. AWG43928, dated 29 August 2016
- Exterior Samples V2, prepared by Millbrook Homes, Job No. M17H0032, Ref, C, dated 22 November 2017
- Waste Management Plan for Lot 6Y (2069) Pittwater Road Bayview, 2104, undated

Conditions of Approval

This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

Note: Persons having the benefit of development consent may appoint either a council or an accredited certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.

A. Prescribed Conditions:

1. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
2. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
3. A sign must be erected in a prominent position onsite only showing:
 - A. the name, address and telephone number of the Principal Certifying Authority for the work, and
 - B. the name of the principal contractor or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
 - C. that unauthorised entry to the work site is prohibited.

The sign must 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.

4. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - A. in the case of work for which a principal contractor is required to be appointed:
 - i. The name and licence number of the principal contractor, and
 - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
 - B. in the case of work to be done by an owner-builder:
 - i. The name of the owner-builder, and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
 - C. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under a or b above becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
5. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
6. This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.
7. Any building work in relation to the development consent is to be carried out in accordance with the requirements of the Building Code of Australia.
8. This consent does not approve the demolition of structures on the site. Demolition of structures shall be subject to a separate consent(s).

B. Matters to be incorporated into the development and maintained over the life of the development:

1. No part of the site is to be used as a "secondary dwelling" and/or a "dual occupancy" (as defined by the dictionary within Pittwater Local Environment Plan 2014) without consent.
2. A single retaining wall shall be constructed along northwest boundary in the vicinity of the Kitchen and Alfresco, with a minimum 1m setback (to the back of the wall) from the northwest boundary (i.e. the boundary separating the site and 2071 Pittwater Road, Bayview). No retaining walling shall be constructed along any property boundary.

3. Window No. W18 (as indicated on the plan titled Elevations 02) is to be obscured and/or screened. Any such screen shall be finished from materials and colours that are consistent with the remainder of the dwelling.
4. No plant equipment is to be installed on the roof of the dwelling.
5. It must be demonstrated that goods, materials and other products, that may be potentially hazardous and/or pollute floodwaters, including pool chemicals, will be stored above the Flood Planning Level.
6. All new structural elements, new external finishes and new internal finishes located below the Flood Planning Level must be constructed using flood-compatible techniques and materials. Refer to Council's Flood Compatible Building Guidelines for more information at http://www.pittwater.nsw.gov.au/data/assets/pdf_file/0003/131466/Flood-Compatible_Building_Guidelines_-_FINAL_-_25_July_2013.pdf.
7. All new electrical services, fixtures and fittings must be located above the Flood Planning Level. No electrical equipment or electrical motors are to be located below Flood Planning Level.
8. The following Flood Risk Management Report and any subsequent updates shall apply for the life of the development:
 - Flood Risk Assessment - Proposed New Residence at 2069 Pittwater Rd, Bayview, by Northern Beaches Consulting Engineers (5 June, 2017)
9. In order to not reduce the available volume for flood storage, compensating works are to be undertaken. A portion of the front yard (within the 1% AEP extents) may be excavated (150mm maximum) to provide the additional 1.5m³ of storage volume, as per the Flood Risk Assessment Report by Northern Beaches Consulting Engineers (5 June, 2017).
10. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.
11. Any new fencing (with the exception of swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.
12. No environmental weeds are to be planted on the site. Refer to Council website <https://www.northernbeaches.nsw.gov.au/environment/weed-management> for environmental weed lists.
13. Any vegetation planted onsite outside approved landscape zones is to be consistent with:
 - Species listed from the Endangered Ecological Community
 - Locally native species growing onsite and/or selected from the list pertaining to the vegetation community growing in the locality as per the vegetation mapping and Native Plants for Your Garden available on the Council website http://www.pittwater.nsw.gov.au/environment/species_lists

14. Landscaping is to be implemented in accordance with the approved Landscape Plan, authored by Urban Harmony, dated 23/1/18, drawing no. 511.120 Rev DA.1. The new landscaping is to be approved as completed by the accredited certifier upon issue of the Occupation Certificate unless further conditions regarding the completion timeframe are imposed. This landscaping is to then be maintained for the life of the development.
15. All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.
16. In accordance with Pittwater 21 DCP Control B4.22 Protection of Trees and Bushland Vegetation, all existing trees as indicated in the Survey Plan and/or approved Landscape Plan shall be retained except where Council's prior written consent has been obtained, for trees that stand within the envelope of approved development areas and removal is approved through an arborist report. For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.
17. All planting of new plant stock within the notional TPZ of trees to be retained shall be limited to 100mm, and soil levels shall not be in excess of 20mm unless under the specific direction of the project Arboriculturist.
18. In relation to T1 - *Corymbia maculate* (Spotted Gum) pruning in excess of 10% of the total live canopy per calendar year will not be approved. The tree is to retain its overall shape and not be subjected to excessive pruning for the life of the development. It is foreseeable that frequent deadwood removal will be required to ensure the safety of property occupants. This deadwood removal does not require Council Permit but shall be carried out by a minimally AQF Level 3 Arborist at all times to ensure both tree and resident longevity.
19. It is recommended that the relocation of T12 and T23 is to be carried out by a qualified contractor with proven experience in this area and a maintenance strategy for a 12 month re-establishment period is to be developed, implemented and incorporated into the detailed landscape working drawings.
20. The recommendation of the risk assessment required to manage the hazards as identified in Geotechnical Report prepared by AW Geotechnical Pty Ltd dated 20 July 2017 are to be incorporated into the construction plans.
21. The Stormwater Harvesting and Reuse Scheme shall be installed and operated in accordance with the accepted design, Manufacturer's Specifications and associated operational guidelines.

In this regard the BASIX tank size requirement is to be increased to a minimum of 9000 litres as an offset for the removal of the OSD requirement.
22. As part of the integrated stormwater management plan, suitably positioned stormwater quality improvement devices shall be installed and operated in accordance with Manufacturer's Specifications and associated operational guidelines.

23. The stormwater quality improvement devices shall be maintained and emptied of spoil materials at regular intervals. Spoil materials removed from the stormwater quality improvement devices shall be disposed of as dry house hold mixed waste.
24. As part of an integrated on-site stormwater management system, stormwater overflow from the rainwater tank is to discharge to the public drainage system , in accordance with report of Northern Beaches Consulting Engineers.
25. The land is an identified landslip area. On-site infiltration systems are not permissible.
26. The internal driveway finish is:
 - A. to be a stable surface for all weather conditions
 - B. to be constructed of materials that blend with the environment and are of dark or earthy tones or natural materials.
27. To satisfy the off-street parking requirements for development, the minimum number of 2 vehicle space requirements shall be provided.

These spaces are to be provided and retained over the life of the development.
28. A minimum of 200mm clearance is to always be maintained to the tree trunk from proposed bearers, joists and decking.
29. Any external plant/air-conditioning system must not exceed a noise level of 5dBA above the background noise level when measured at the boundaries of the property.
30. Noise from the operation of any plant or equipment at the premises shall comply with the noise provisions of the *Protection of the Environment Operations Act, 1997*.
31. No water pollution shall result from the operation of any plant or equipment or activity carried out.
32. No odour nuisance to the public or any adjoining premises, shall be created by the operation of any plant or equipment or any procedure carried out at the premises.
33. No emissions causing air pollution shall be created by the operation of any plant equipment or any procedure carried out at the premise.
34. The operation of any plant or equipment or any procedure carried out at the premises shall not cause land pollution.
35. Pool fencing is to be designed, located and maintained in accordance with the *Swimming Pools Act 1992*, Regulation and Australian Standard 1926.1-2012, Safety barriers for swimming pools.

36. A warning notice (resuscitation chart) and External Cardiac Compression Chart is to be affixed and maintained in a prominent location adjacent to the pool / spa.
 - A. The warning notice (i.e. sign) must contain all of the following words:
 - i. "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL" and
 - ii. "POOL GATES MUST BE KEPT CLOSED AT ALL TIMES", and
 - iii. "KEEP ARTICLES, OBJECTS AND STRUCTURES AT LEAST 900 MILLIMETRES CLEAR OF THE POOL FENCE AT ALL TIMES",
 - B. In addition, the notice must contain a simple flow sequence (which may be the flow sequence depicted in the Cardiopulmonary Resuscitation Guideline) containing details of resuscitation techniques (for infants, children and adults):
 - i. that are set out in accordance with the relevant provisions of that Guideline, and
 - ii. that comply with the other relevant guidelines of the Australian Resuscitation Council, and
 - iii. that are illustrated by drawings with key words only in bold print,
 - C. a statement to the effect that formal instruction in resuscitation is essential,
 - D. the name of the teaching organisation or other body that published the sign and the date of its publication.
37. All sanitary drainage must be concealed in service ducts or otherwise hidden from external view to the satisfaction of the Responsible Authority.
38. All external glazing is to have a maximum reflectivity index of 25%.
39. New electrical connections are to be carried out using underground cabling.
40. Materials and colour schemes are to be in accordance with the approved colour schedule.
41. Any retaining wall that is visible from public areas shall be constructed and/or finished with sandstone/sandstone-like materials.

Timber log retaining walls are not permitted.

C. Matters to be satisfied prior to the issue of the Construction Certificate:

Note: All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

1. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of Australia and satisfy all conditions shown in Part B above are to be submitted to the Principal Certifying Authority.
2. The Principal Certifying Authority must be provided with a copy of plans that a Quick Check agent/Sydney Water has stamped before the issue of any Construction Certificate.

3. The person having the benefit of this consent is required to notify the Principal Certifying Authority to ensure that the following critical stage inspections are undertaken, as required under clause 162A(4) of the Environmental Planning and Assessment Regulation 2000:
 - A. after excavation for, and prior to the placement of, any footings, and
 - B. prior to pouring any in-situ reinforced concrete building element, and
 - C. prior to covering of the framework for any floor, wall, roof or other building element, and
 - D. prior to covering waterproofing in any wet areas, and
 - E. prior to covering any stormwater drainage connections, and
 - F. after building work has been completed and prior to any occupation certificate being issued in relation to the building.

To allow a Principal Certifying Authority to carry out critical stage inspections, at least 48 hours notice must be given before building work is commenced and prior to further work being undertaken.

4. In accordance with section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate of 0.0035 of the total cost of the work to either the Long Service Payment Corporation or Council for any work costing \$25,000 or more.
5. Plans and details demonstrating that the commitments identified in the BASIX Certificate that apply to the construction certificate or complying development plans and specifications are fulfilled.
6. Details and recommendations provided in the report titled Preliminary Acid Sulfate Soils Assessment: 2069 Pittwater Road, Bayview, NSW 2104 prepared by Canopy Enterprises ref no. BAP117-166 dated November 2017 must be implemented to ensure risk to the Environment is minimised.
7. Any new information which comes to light during remediation, excavation or construction works which has the potential to alter previous conclusions about the uncovering of Acid Sulfate Soil must be notified to the Certifier as soon as reasonably practicable. This will also require an Acid Sulfate Soil Management Plan, including disposal of affected soil to an approved facility, to be submitted to the certifier, before work continues.
8. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
9. Engineering details showing the Stormwater Harvesting and Reuse Scheme are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Such details are to be accompanied by a certification by a qualified practicing Water/Environmental/Civil Engineer with corporate membership of the Institution of Engineers Australia (MIE Aust), or who is eligible to become a corporate member and has appropriate experience and competence in the related field, confirming that the plans/details comply with Pittwater 21 DCP.

10. Drainage plans including specifications and details showing the site stormwater management are to be submitted to the Accredited Certifier with the Construction Certificate application. Such details are to be accompanied by a certificate from (as appropriate) either a Licensed plumber or qualified practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field, that the stormwater management system complies with the requirements of section 3.1.2 Drainage of the Building Code of Australia Housing Provision and AS/NZS 3500.3.2 - Stormwater Drainage. The details shall include disposal of site stormwater (if the site is in a known slip area the stormwater disposal system must comply with the recommendations of a Geotechnical Engineers Report).

Note: Where Council is the Principal Certifying Authority 3 sets of plans/specifications are to be submitted.

11. A certificate is to be provided to the Principal Certifying Authority with the Construction Certificate application by a qualified experienced practicing Civil Engineer, with Corporate membership of the Institute of Engineers Australia (M.I.E.) or who is eligible to become a Corporate member and has appropriate experience and competence in the related field that the existing stormwater system performs satisfactorily and is capable of serving the proposed additions in accordance with the requirements of section 3.1.2 Drainage of the Building Code of Australia Housing Provision and AS/NZS 3500.3.2 - Stormwater Drainage.
12. Plans and details demonstrating that the following issues have been addressed are to be submitted to the Accredited Certifier with the Construction Certificate application.
 - A. Driveway profiles must be obtained from Council for all access driveways across the public road verge to road edge. The driveway profiles provided by Council must be incorporated into and attached to design plans for the access driveway and internal driveway.
 - B. All construction of the access driveway across the public road verge must be undertaken by a Council authorised contractor.
 - C. Council's Fees and Charges apply to driveway profiles and Deed of Agreement for Access Driveway.
13. Applicants will be required to obtain prior to the issue of a Construction Certificate, a Section 139 Consent for Works on a Public Road Reserve issued by the Council under the provisions of Section 138 of the *Roads Act 1993* for the design and construction of any works located on the road reserve including Access Driveways.
14. Civil engineering details of the proposed excavation/landfill are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who has corporate membership of the Institution of Engineers Australia (M.I.E) or who is eligible to become a corporate member and has appropriate experience and competence in the related field.

15. The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public and private properties and public infrastructure (including roads, gutter, footpaths, etc.). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

D. Matters to be satisfied prior to the commencement of works and maintained during the works:

Note: It is an offence to commence works prior to issue of a Construction Certificate.

1. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.

Note: This condition does not apply in relation to Crown building work that is certified, in accordance with Section 116G of the Act, to comply with the technical provisions of the States building laws.

2. Any proposed demolition works shall be carried out in accordance with the requirements of AS2601-2001 The Demolition of Structures.

Amongst others, precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:

- A. Protection of site workers and the general public.
- B. Erection of hoardings where appropriate.
- C. Asbestos handling and disposal where applicable.
- D. Any disused service connections shall be capped off.

Council is to be given 48 hours written notice of the destination/s of any excavation or demolition material. The disposal of refuse is to be to an approved waste disposal depot.

3. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
4. The following facilities must be provided on the site:
 - A. toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
 - B. a garbage receptacle for food scrapes and papers, with a tight fitting lid.

Toilet facilities are to be provided in a location which will not detrimentally affect the amenity of any adjoining residents at or in the vicinity of the work site during the duration of the development.

5. Construction access via the adjoining public walkway is not permitted without consent.

6. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must give the owner of the adjoining property at least seven (7) days written notice of their intention to excavate below the level of the base of the footing and furnish the adjoining property owner with particulars of the proposed work.
7. All excavations and backfilling associated with the erection of a building must be executed safely and in accordance with appropriate professional standards.
8. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.
9. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
10. Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.
11. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.
12. The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations.
13. Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of approved erosion and sediment control measures – during and after construction and until the site has been restored to the satisfaction of council.
14. Waste materials generated through demolition, excavation and construction works are to be minimised by re-use on site, recycling or where re-use or recycling is not practical, disposal at an appropriate authorised waste facility.

All waste dockets and receipts regarding demolition, excavation and construction waste are to be retained on site to confirm which facility received the material for recycling or disposal.

The ongoing operation of Recycling and Waste Management Services is to be undertaken in accordance with the Waste Management Plan.
15. The site must be fenced throughout construction and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
16. No works are to be carried out in Council's Road Reserve without the written approval of the Council.

Note: Separate approval is required for access driveways, paths, connections to underground services (stormwater, gas, sewer, electricity, etc.), and landscaping works within Council's Road Reserve.

17. A Road Opening Permit, issued by Council, must be obtained for any road openings, or excavation within Council's Road Reserve associated with the development on the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
18. No skip bins or materials are to be stored on Council's Road Reserve.
19. Access to the site through the adjoining reserve/public walkway is prohibited without the written approval of the Council.
20. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
 - A. The builder's name, builder's telephone contact number both during work hours and after hours.
 - B. That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
 - C. That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
 - D. That no skip bins or materials are to be stored on Council's Road Reserve.
 - E. That the contact number for Northern Beaches Council for permits is 9970 1111.
21. A construction traffic management plan (CTMP) prepared by a suitably qualified traffic consultant is required to be submitted to the Private Certifying Authority prior to the commencement of any site works. The plan is to detail:
 - A. Quantity of material to be transported
 - B. Proposed truck movements per day
 - C. Proposed hours of operation
 - D. Proposed traffic routes, noting that 3 tonne load limits apply to some roads within the former Pittwater Council Local Government Area
 - E. Location of on/off site parking for construction workers during the construction period.
22. A Project Arborist with minimum qualification equivalent to AQF Level 5 is to be appointed prior to commencement of works. The Project Arborist is to oversee all excavation works for the retaining walls in the vicinity of existing trees.
 - A. Tree protection shall be undertaken as follows:
 - i. all tree protection shall be in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4.
 - ii. tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

- iii. to minimise the impact on trees and vegetation to be retained and protected, 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.
 - iv. no tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by the Project Arborist on site.
 - v. all structures are to bridge tree roots greater than 50mm diameter unless directed by the Project Arborist on site.
 - vi. should either or both iv) and v) occur during site establishment and construction works, details shall be submitted by the Arborist to the Certifying Authority.
- 23. As there are existing trees to be retained within 5 metres of proposed development works, all recommendations as outlined in the supplied Arboricultural Impact Assessment dated 20th April 2017 and the Addendum - *Arboricultural Assessment of Pool & Landscaping development around T1*, dated 29 January 2018 by Margot Blues Consulting Arborist, are required to be complied with before and throughout the development period, particularly with regard to the following:
 - A. Works, erection/demolition of structures, excavation or changes to soil levels within the notional TPZ of existing trees are not permitted unless part of the development as approved, and the storage of spoil, building materials, soil or the driving and parking of any vehicle or machinery within the notional TPZ of the trunk of a tree to be retained is not permitted;
 - B. Where specified, tree guards are to be provided to all trees as indicated in the report, and are to be installed prior to the commencement of any work on the site. Tree guard materials and dimensions are specified in the arborist report;
 - C. All works within the notional TPZ of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and suitably qualified arborist. In the event that major structural or feeder roots are encountered, the arborist is to advise the builder to carry out appropriate action to ensure the retention of the tree.
 - D. Signage is to be erected advising all contractors and visitors to the site that no works or storage are to take place within the dripline of existing trees.
 - E. Any changes or alterations made to the tree management recommendations as outlined by the arborist report due to the discovery of new structural roots or underground services during development works must be reported to the Principal Certifying Authority prior to works recommencing.

The Addendum - *Arboricultural Assessment of Pool & Landscaping development around T1* overrides the AIA in relation to T1.

- 24. Prior to the commencement of construction works, all tree protection recommendations in particular the establishment of tree protection zone fencing as specified in the approved Arboricultural Impact Assessment authored by Margot Blues, dated 20th April 2017 and the Addendum dated 29 January 2018 are to be certified by the consulting arborist as being adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites. Certification is to be provided to the certifying body prior to the issue of the Occupation Certificate.

25. No storage of building materials or building waste, excavated fill or topsoil storage is to occur within the dripline of trees shown on the approved landscape working drawing(s) as being retained or within protective fenced areas.

Drainage is to be arranged such that fill, building materials or contaminants are not washed into protective fenced areas.

26. The developer or contractor will take all measures to prevent damage to trees and root systems during site works and construction activities including provision of water, sewerage and stormwater drainage services. In particular, works, erection of structures, excavation or changes to soil levels within the notional TPZ of the trunks of trees to be retained are not permitted, and the storage of spoil, building materials, soils or the driving or parking of any vehicle or machinery within the notional TPZ of the trunk of a tree to be retained, is not permitted.

NOTE: Trees that are part of an Endangered Ecological Community or are habitat for threatened species and endangered populations must comply with the requirements of the Threatened Species Conservation Act, 1995. Failure to do so may result in a penalty up to a maximum of \$250,000.00 and jail sentences.

Failure to comply with the requirements of the Pittwater 21 DCP Control B4.22 Preservation of Trees of Bushland Vegetation may result in a penalty up to a maximum of \$20,000.00.

27. In the event that any tree required to be retained is damaged during works on the site, the person acting upon this consent shall advise Council in writing within 48 hours of the damage being identified.
28. All works within the notional TPZ of the existing trees to be retained including pruning, demolition, excavation, civil works, fencing and the like must be carried out by hand under the supervision of an experienced and qualified Arborist. Should roots larger than 50mm be encountered all excavation works are to cease immediately and a qualified Arborist is to advise on the impacts of the roots removal on the tree's survival and report to the Principal Certifying Authority prior to works recommencing. If tree roots are present a pier and beam method of footing construction is to be adopted so as to bridge/span any identified lateral roots.

E. Matters to be satisfied prior to the issue of Occupation Certificate:

Note: Prior to the issue of an Occupation Certificate the principal certifying authority is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the issue of an Occupation Certificate or suitable arrangements put in place to effect those repairs at a future date to Council's written satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to effect such works.

Note: It is an offence to occupy the building or part thereof to which this consent relates prior to the issue of an Occupation Certificate.

1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
2. The dwelling is to have approved hard-wired smoke alarms installed and maintained over the life of the development. All hard-wired smoke alarms are to be Australian Standard compliant and must be installed and certified by any appropriately qualified electrician prior to the issue of any Occupation Certificate.
3. Certification is to be provided that the commitments identified in the BASIX Certificate have been fulfilled.
4. Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
5. Certification is to be provided to a Principal Certifying Authority by an experienced Water/Environmental/Civil Engineer who is NPER accredited by the Institution of Engineers, Australia that the stormwater harvesting and reuse scheme has been completed in accordance with the engineering plans and specifications required under this consent.
6. The stormwater drainage system must be constructed and completed in accordance with the approved design and relevant Australian Standards.

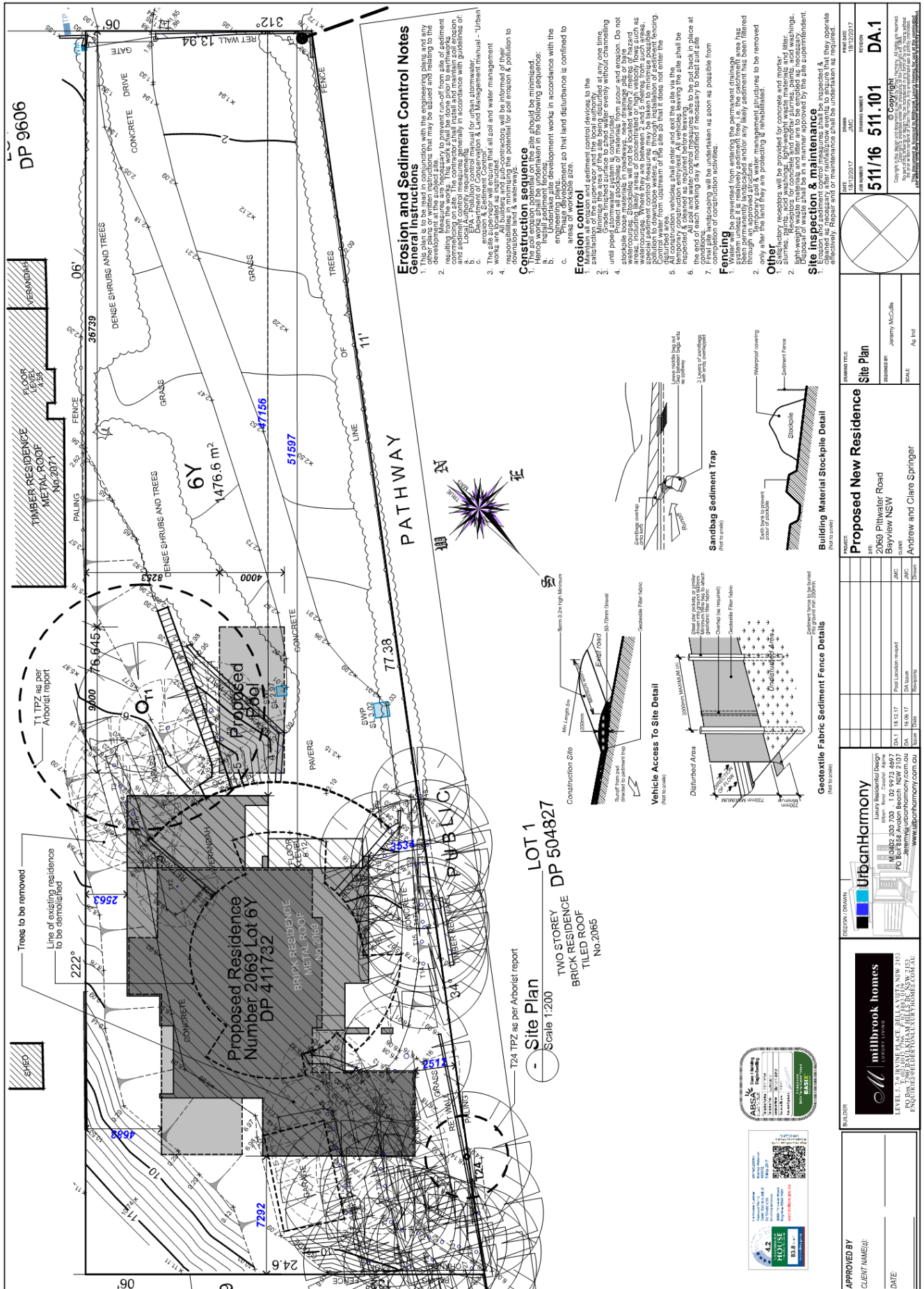
A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards must be provided.
7. The applicant must obtain written confirmation from Council that all works in the road reserve have been completed in accordance with the conditions of the Roadworks Permit.
8. A Certificate is to be submitted to the Principal Certifying Authority with the Subdivision Certificate application by a qualified practising Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field confirming to the satisfaction of the Private Certifying Authority that the driveway has been constructed in accordance with the approved plans and relevant conditions of Development Consent.
9. The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

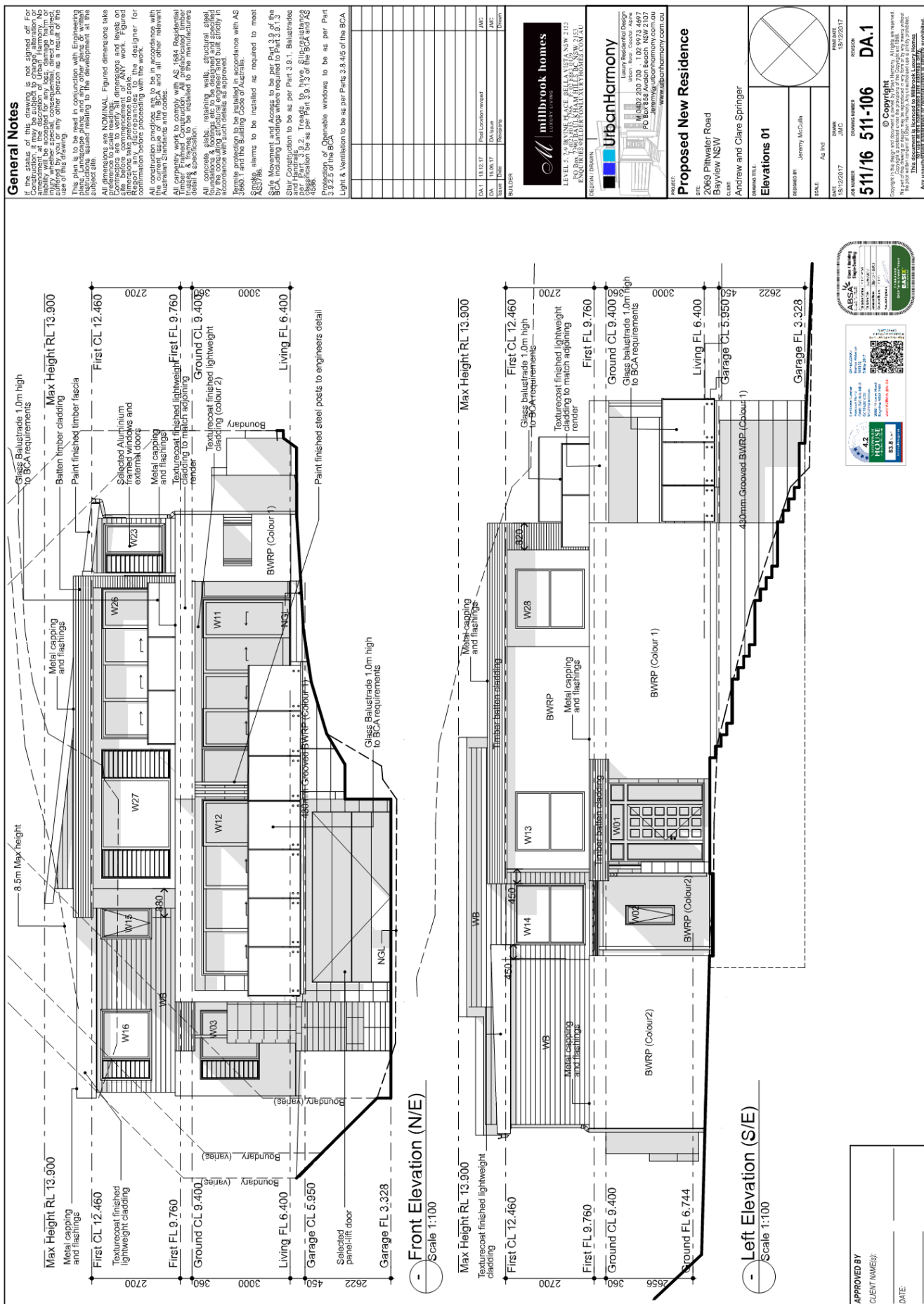
10. Prior to issue of an Occupation Certificate photographic evidence of the condition of the street trees and road reserve and area adjoining the site after the completion of all construction, must be submitted to the Principal Certifying Authority showing that no damage has been done and if damage has been done that it has been fully remediated. The photographs shall be accompanied by a statement that no damage has been done (or where damage has been remediated that Council has approved that work). In this regard Council's written agreement that all restorations have been completed satisfactorily must be obtained prior to the issue of any Occupation Certificate.
11. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Occupation Certificate application.
12. Prior to the commencement of construction works, all tree protection recommendations in particular the establishment of tree protection zone fencing as specified in the approved Arboricultural Impact Assessment by Margot Blues Consulting arborist dated 20th April 2017 are to be certified by the consulting arborist as being adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites. Certification is to be provided to the certifying body prior to the issue of the Occupation Certificate.
13. Prior to the commencement of construction works, all tree protection recommendations in particular the establishment of tree protection zone fencing as specified in the approved Arborist Report by Margot Blues dated 20 April 2017 & 29 January 2018 are to be certified by the consulting arborist as being adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites. Certification is to be provided to the certifying body prior to the issue of the Occupation Certificate. Documented evidence of a qualified arborist having supervised the works in proximity to trees being retained and ensuring that all tree protection measures are adopted as specified in the approved arborist report is required. This documentation is to be provided prior to the issue of the Occupation Certificate.
14. Street numbers are to be affixed so that they are clearly displayed and visible from a public place.

G. Advice:

1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
2. Dial before you dig: Prior to excavation the applicant is advised to contact Australia's National Referral Service for Information on Underground Pipes and Cables telephone 1100 or www.1100.com.au.
3. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.

4. In accordance with Section 95(1) of the EPA Act 1979, this development consent lapses 5 years after the date from which this consent operates if the development is not commenced.
5. To ascertain the date upon which a consent operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).
6. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the Environmental Planning and Assessment Act, 1979. Such request to Council must be made in writing, together with appropriate fees as advised at the time of lodgement of such request, within 6 months of the determination.
7. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979, gives you a right of appeal to the Land and Environment Court within 6 months of the date of endorsement of this Consent.
8. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Waters sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to the web site at www.sydneywater.com.au then see Building Developing and Plumbing then Quick Check, or telephone 13 20 92.
9. This approval does not prejudice any action in respect of upgrading the building pursuant to the provisions of the Section 121B of the *Environmental Planning and Assessment (Amendment) Act, 1997*.
10. No bush rock is to be removed from site or destroyed without prior approval from NSW Department of Environment Climate Change and Water (DECCW) and Northern Beaches Council. The removal or destruction of bush rock has been listed as a Key Threatening Process by the Threatened Species Conservation Act 1995. Bush rock within an approved building footprint is to be re-used elsewhere onsite as a habitat feature.
11. Gravel used onsite must be inert material such as quartz or sandstone. No blue metal or granite or other igneous material should be used as these release nutrients that can pollute waterways and contribute to weed plumes.





General Notes

If the status of this drawing is not signed off For Construction, it may be subject to change, alteration or deletion. It is the responsibility of the client to ensure that the drawing is used for the purpose intended and is not used for any other purpose. The client is responsible for ensuring that the drawing is used for the purpose intended and is not used for any other purpose. The client is responsible for ensuring that the drawing is used for the purpose intended and is not used for any other purpose.

All dimensions are NOMINAL. Flatted dimensions take into account the thickness of the material. Flatted dimensions are to be used for the purpose of ordering materials. Flatted dimensions are to be used for the purpose of ordering materials. Flatted dimensions are to be used for the purpose of ordering materials.

All concrete, slabs, retaining walls, structural steel, foundations & footings are to be designed and specified in accordance with the Australian Standard AS 3600:2009 and the Building Code of Australia. All concrete, slabs, retaining walls, structural steel, foundations & footings are to be designed and specified in accordance with the Australian Standard AS 3600:2009 and the Building Code of Australia.

Light & Ventilation to be as per Part 3.8.4.5 of the BCA.

DA 1	15.12.17	Post Location revised	JAC
DA	15.06.17	DA Issue	JAC
Issue	Date	Description	Drawn
1	15.12.17	Post Location revised	JAC
2	15.06.17	DA Issue	JAC
3	15.12.17	Post Location revised	JAC
4	15.06.17	DA Issue	JAC
5	15.12.17	Post Location revised	JAC
6	15.06.17	DA Issue	JAC
7	15.12.17	Post Location revised	JAC
8	15.06.17	DA Issue	JAC
9	15.12.17	Post Location revised	JAC
10	15.06.17	DA Issue	JAC

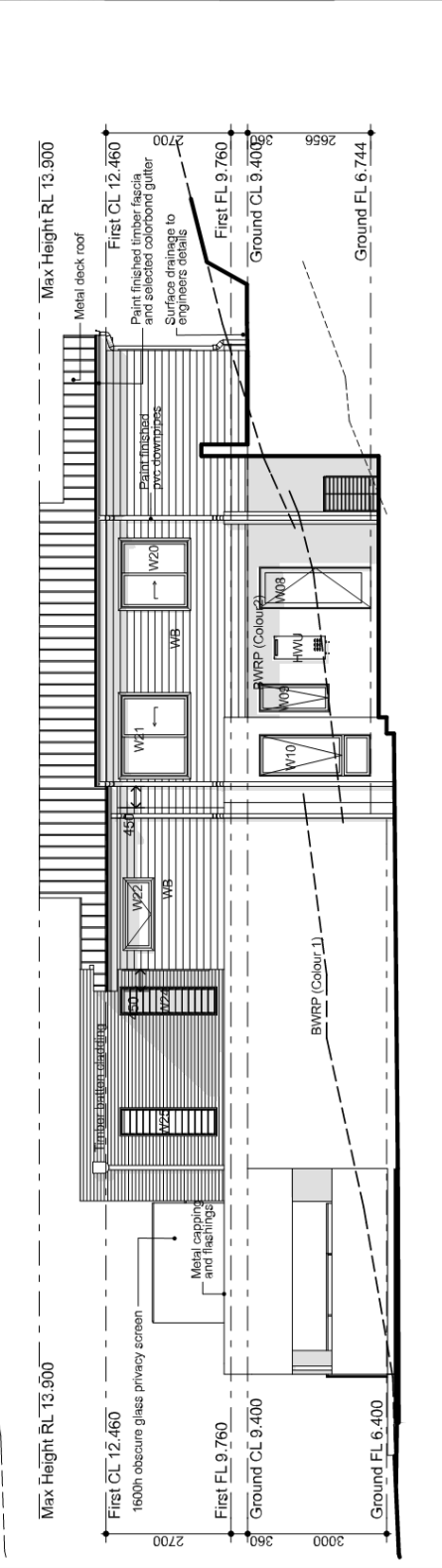
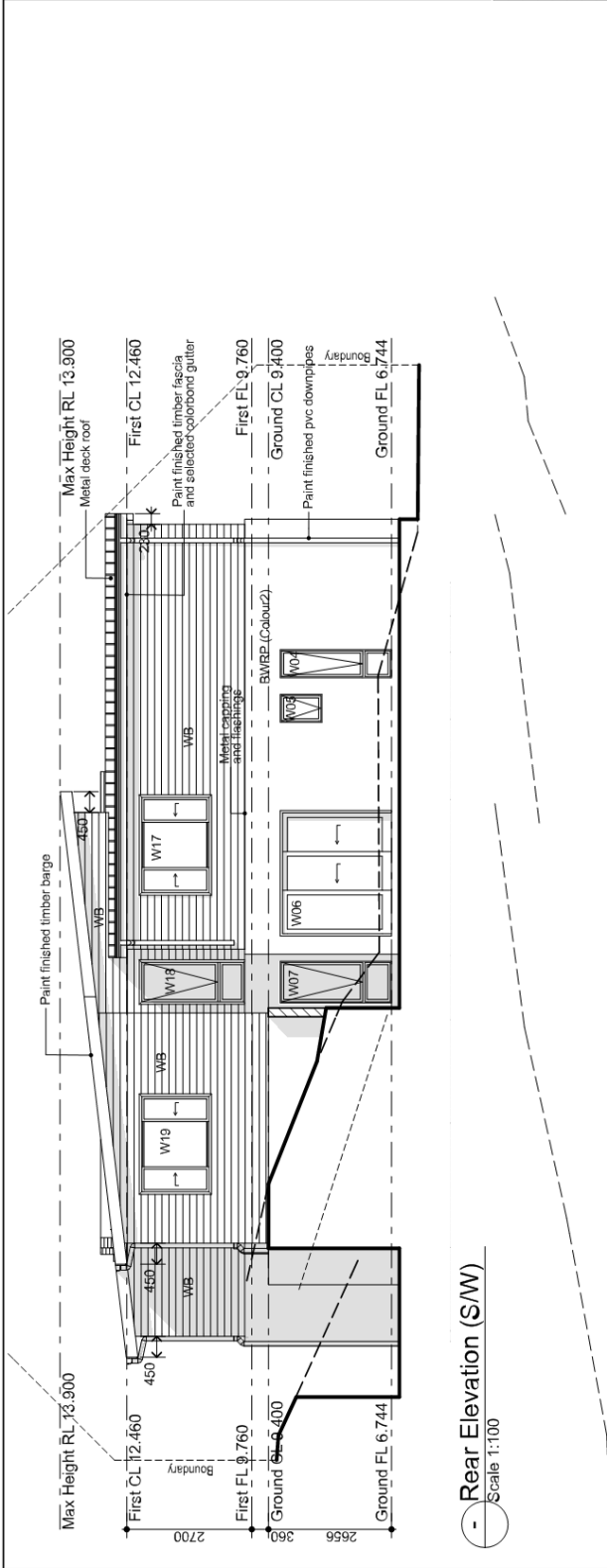
millbrook homes
LUXURY RESIDENTIAL DESIGN
LEVEL 5, 100 BROADWAY, SYDNEY NSW 2107
PH: 02 9550 2107
WWW.MILLBROOKHOMES.COM.AU

UrbanHarmony
Luxury Residential Design
W: 02 9550 2107
PO Box 856 Avonlea Beach NSW 2107
WWW.URBANHARMONY.COM.AU

Proposed New Residence
2069 Pittwater Road
Bayview NSW
Andrew and Clare Springer

Elevations 02
DESIGNED BY: Jeremy McCall
SCALE: As Ind
DATE: 18/12/2017

511/16 511-107 DA.1
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APPROVED BY
CLIENT NAME(S):
DATE:

ABS
Australian Building Standards
4.2
NBS 1:100
\$3.30

ABS
Australian Building Standards
4.2
NBS 1:100
\$3.30

ITEM 3.3	DA2017/1151 - 39 UNDERCLIFF ROAD FRESHWATER - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2018/214517
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site and Elevation Plans

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2017/1151 for Alterations and additions to a dwelling house on land at Lot 22 DP 17127, 39 Undercliff Road, FRESHWATER, subject to the conditions outlined in the report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 11 April 2018

39 Undercliff Road Freshwater - Alterations and additions to a dwelling house

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/1151
Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 22 DP 17127, 39 Undercliff Road FRESHWATER NSW 2096
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	Jordan Andrew Reizes Lisa Maree Reizes
Applicant:	Norrskan Ko
Application lodged:	27/11/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	30/11/2017 to 18/12/2017
Advertised:	Not Advertised
Submissions Received:	3
Recommendation:	Approval
Estimated Cost of Works:	\$ 600,000.00

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 22 DP 17127 , 39 Undercliff Road FRESHWATER NSW 2096
Detailed Site Description:	<p>Number 39 Undercliff Road, Freshwater (the subject site) is a single residential allotment located on the southern side of the road and approximately 300m north-west of Freshwater Beach.</p> <p>The allotment is regular in shape and has a street frontage of 13.7m, rear boundary of 12.85m and sides of 39m and 46.5m respectively. In total, the site area is surveyed to be 551m².</p> <p>The site is located on the high-side of Undercliff Road and experiences a sloping topography, inclining toward the south. From the street frontage the site inclines some 4m to the dwelling, another 5m to the rear of the dwelling and up to another 8m to the rear boundary. The rear portion of the site beyond the dwelling comprises of natural rock outcrops and an</p>

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escarpment which contribute to a 4m rise in the land. Technically, and at the extremes, the sites low point is RL22.91 and the highest point is RL39.59 - a difference of approximately 17m.

Presently the site accommodates a detached double garage on the front boundary and a part one / part two / part three storey brick dwelling house, generally located toward the rear of the site. A series of decks and external stairs run along the south-eastern boundary.

The site has two large pine trees in the front yard (thought to be Norfolk Pines) and a smaller palm. Other smaller shrubbery exists scarcely around the property, but deep soil landscaping is largely restricted by the shallow soil depths atop of the rock.

Surrounding developments consist of other detached dwelling houses of varying age, size and architecture. Given the land value in Undercliff Road and Freshwater in general, there is a prevailing trend of new dwelling construction consisting of multiple floors and entertaining areas and generally situated on the site to maximise the potential for ocean and beach views.

Directly east of the site frontage is the 'Harbord Hilton' hotel and car park and, as noted before, Freshwater Beach is further east.

Map:



SITE HISTORY

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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.

PROPOSED DEVELOPMENT IN DETAIL

The development application is for alterations and additions and refurbishment to the existing dwelling on site.

The following works are proposed:

- construction of staircase, bin enclosure and landscaped planter boxes from front boundary to ground floor;
- construction of deck and pergola accessible from secondary dwelling, installation of new external doors;
- construction of new entry foyer and lift up to the principal dwelling;
- internal reconfiguration and extension of the existing first floor;
- re-tiling of existing north-eastern decking and construction of external staircases;
- extension of existing second floor and construction of a northern facing balcony;
- replacement of existing rear timber deck;
- landscaping works throughout

The majority of the external facade of the dwelling is to be retained as exposed brick, and other additions at first floor level are to be constructed in the same material. The proposed second floor additions are to be clad in a painted sycon weatherboard cladding.

AMENDED PLANS

After a preliminary assessment of the application Council wrote to the applicant on 13 February 2018 outlining a number of matters that required attention, and these matters predominantly involved the side boundary envelope non-compliance on the north-western facade, potential privacy impacts to No. 41 Undercliff Road and the use of the lower ground floor as a secondary dwelling.

Council met with the Applicant on 20 February 2018 to discuss the contents of the letter and the proposal in general. A number of design alternatives were discussed in the meeting, and the most suitable solution to the issues raised included the deletion of the lift from the top floor, the lowering and raking of a portion of the roof and additional privacy measures to be implemented. The lower ground floor secondary dwelling was also to be reduced in size.

Council received amended plans on 8 March 2018 which achieved the above as discussed in the meeting. In accordance with Clause A.7 of the WDCP 2011, Council did not renotify the development application, but did informally email the neighbouring property at No. 41 Undercliff Road and provide them with a copy of the amended plans.

This report herein references the amended plans received.

SECONDARY DWELLING

The development notes a lower ground floor secondary dwelling. Council is unable to find any record of



a secondary dwelling approval on this site, and no documentation has been furnished to Council to support this element of the building. The application did not apply for use of the space as a secondary dwelling and accordingly, despite the secondary dwelling being of acceptable impact, it is not approved as an element of this report.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 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)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 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.</p>



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	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Mrs Judith Caroline Bennett	19 Highview Avenue QUEENSCLIFF NSW 2096
Mr Stephen Bennett	19 Highview Avenue QUEENSCLIFF NSW 2096
Clapham Design Services	205 Morrison Road RYDE NSW 2112

The following matters were raised in the submissions received:

- **Stormwater**

A submission received requests that the applicant provides an easement to No. 7 and 9 Highview Avenue, Queenscliff to drain water through the subject site.
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The application has been assessed by Council's Specialist Development / Drainage Engineer whom has advised that the development is satisfactory as proposed, without inclusion of any new easements.

Accordingly, this matter does not warrant the refusal of the application. It is recommended that the objector and applicant engage in a civil discussion regarding this matter.

- **View Loss**

A submission from No. 19 Highview Avenue, Queenscliff, raised concern that the development may result in view loss. A detailed view loss assessment can be found elsewhere in this report. In summary, it is found that the proposal results in no magnitude of view loss that would warrant the refusal of the application.

- **Visual and Acoustic Privacy**

The proposal includes a number of changes to the existing dwelling which could give rise to privacy impacts upon adjoining properties. Overall, it is found that the degree of visual overlooking is reduced by virtue of removing a large portion of the first floor deck and the location of several windows/doors.

A more detailed discussion on privacy can be found elsewhere in this report, and it is found that, subject to condition, the proposal is acceptable in this regard. The recommendations of this report adopt several of the design solutions proposed in the submission received.

It is not anticipated that the development would generate any noise greater than a standard residential dwelling and accordingly, acoustic impacts are not considered to be a reason for refusal.

- **Height**

The development, both existing and proposed, exceeds the maximum Height of Buildings permitted under Cl. 4.3 of the Warringah Local Environmental Plan 2011. This is discussed in greater detail elsewhere in this report.

In summary, it is not found that the proposed building height is unreasonable and does not give rise to unreasonable or adverse amenity impacts upon adjoining properties. Given the quantum of non-compliance proposed to the Height of Buildings standard, the application is to be determined by Council's Development Determination Panel, rather than under delegation.

- **Side Boundary Envelope**

The development encroaches the side boundary envelope on both side elevations. A detailed discussion on these matters can be found elsewhere in this report.

In summary, it is found that the encroachments are not the cause of, nor give rise to any unreasonable or adverse amenity impacts upon adjoining land.

- **Rear Boundary Setback**

The submission received raises concern regarding the proposed encroachment into the rear boundary setback area, particularly that it may obstruct views of the rock escarpment from the
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objecting property.

The encroachment into the rear setback area is considered acceptable given the siting of the existing dwelling and that it does not impact on the existing rock escarpment. Views of the rock escarpment will largely be retained from the objecting property, however their amenity of privacy is considered more valuable (as noted in their submission regarding the same deck) and therefore the imposition of a condition to make the balustrade translucent will allow for views over the top toward the rock escarpment whilst preserving an adequate provision of privacy, particularly from a seated position.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><i>The site contains a significant rock escarpment traversing the rear of the site, and generally along the rear of properties along Undercliff Rd.</i></p> <p><i>The escarpment is considered to be a unique environmental feature in the locality and its protection is paramount to development. Potential for sites of Aboriginal significance on the site as evidence has been uncovered on other sites nearby.</i></p> <p><i>The plans indicate that the works will not impact on the escarpment, which is supported. Conditions have been included to protect the rock and potential sites if uncovered during works.</i></p> <p><i>No objections subject to conditions as recommended.</i></p>
NECC (Development Engineering)	<p><i>No changes are proposed to the off-street parking facility.</i></p> <p><i>No objections are raised to the proposed alterations and additions to the building, subject to conditions.</i></p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<i>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</i>
Aboriginal Heritage Office	<i>The Aboriginal Heritage Office has reviewed the proposal and raises no objections, subject to standard conditions which can be found in the recommendation of this report.</i>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A299922_04 dated 24 November 2017).

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP 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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.



Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.554m (RL39.28)	35.8% (3.04m)	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.9 Preservation of trees or vegetation	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard has taken into consideration the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46.

Requirement:	8.5m
Proposed:	Up to 11.554m (RL39.28)
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	35.8%

The two images below demonstrate the portions of the building which exceed the prescribed 8.5m building height limit when viewed from the south-eastern and north-western elevation (noting that the total level of non-compliance as detailed in the table above is taken from from a building's sectional drawings, and not the

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elevation).

Figure 1: North-western elevation drawing showing areas exceeding the 8.5m Height of Buildings development standard

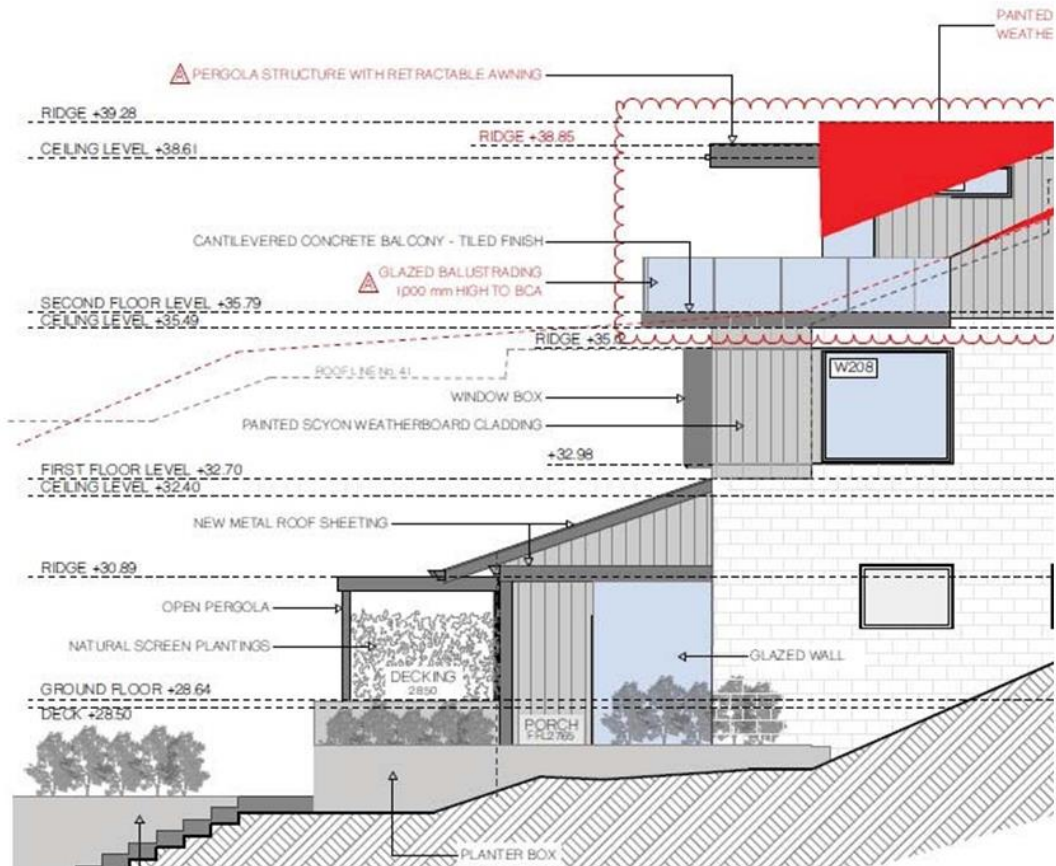
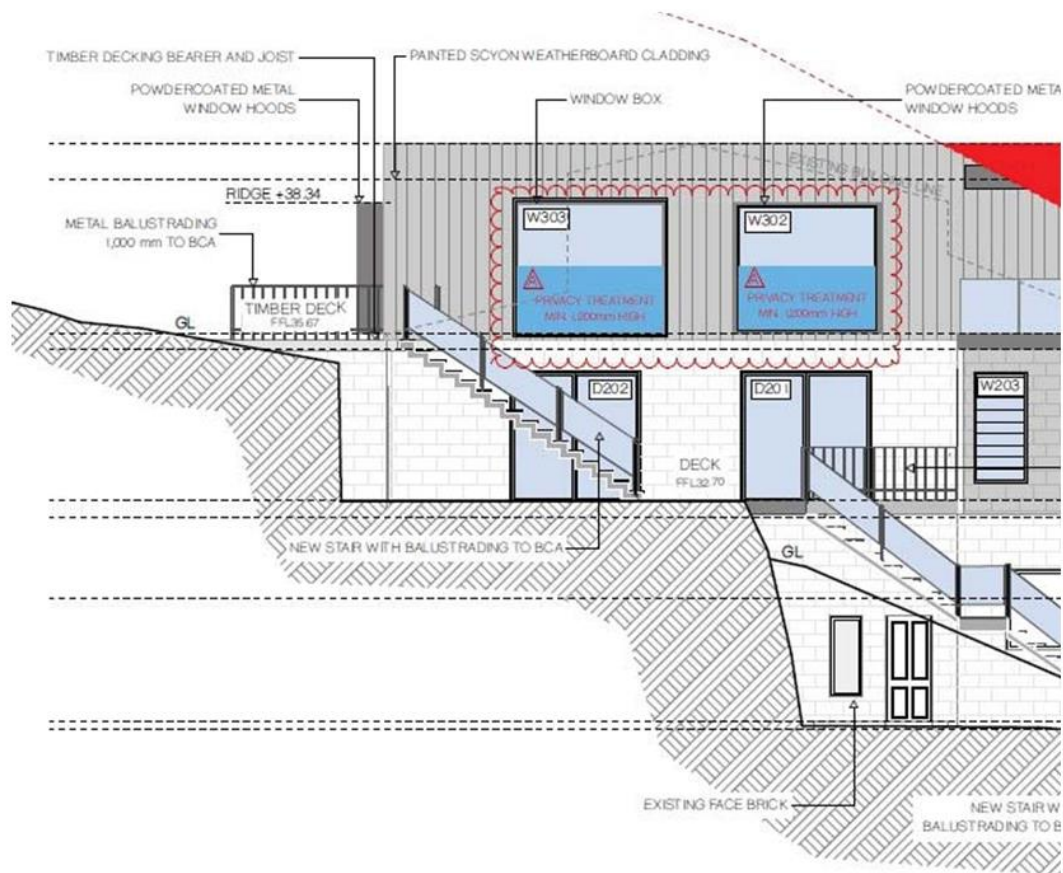


Figure 2: South-eastern elevation drawing showing areas exceeding the 8.5m Height of Buildings development standard



Given that the variation sought to the standard, the proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of Buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of Buildings' of the WLEP 2011 are:

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

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

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Comment: The typology of architectural form in the Undercliff Road streetscape varies significantly as a direct result of the topography and the placement of existing dwellings to maximise potential beach and ocean views to the east. At present, the subject development on site is unusual in the streetscape in that it is setback significantly from the street frontage (the first floor is setback some 21m) compared to the other surrounding dwellings which generally have a front setback of 5.0m or so (excluding the numerous garages that exist with a nil setback). Thereby, the height of the development at present and proposed is more elevated than some other surrounding dwellings given that the building is set at a higher point of the topography than at street level.

The proposed building, being part two storey and part three storey, is not inconsistent with the scale of other surrounding developments which frequently achieve three storeys, often with a front setback lesser than the subject site has. Accordingly, given the prevailing scale of new developments in Undercliff Road and Freshwater in general, it is not found that the development is incompatible with the height and scale of surrounding developments.

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

Comment: Detailed review of applicable amenity impacts are discussed in the relevant sections of this report, however in summary it is not found that the variation to the building height standard would give rise to any unreasonable or adverse amenity impact by virtue of view loss, loss of privacy and loss of solar access.

The visual impact of the development is not considered to be incompatible with the general streetscape, particularly as the proposal seeks to retain the two large trees in the front yard which will contribute to a landscaped character and largely obstruct views of the building. Whilst it is noted that the building will be greater in scale compared to existing when viewed from the adjoining properties private open space in the rear yard, it is found that the development will significantly upgrade the dated facade of the building and will therefore be of an acceptable visual impact.

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

Comment: The development proposed and the variation to the building height standard is not considered to have any adverse impact on the scenic quality of the Northern Beaches coastal and bushland environment, particularly as the works propose no significant excavation, unlike many surrounding dwellings, and as the works retain the two large trees within the front setback area which are the predominant feature of the site.

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

Comment: When viewed from the public domain the development will generally be an enhancement to what is existing through the formalisation of a landscaped street frontage and an updated facade. The retention of two large trees will significantly obstruct direct views of the property from the public domain and will contribute to mitigating any perceived visual bulk and scale.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R2 Low Density Residential zone.



The underlying objectives of the R2 Low Density Residential zone:

- ***To provide for the housing needs of the community within a low density residential environment.***
Comment: The present use of the site for residential accommodation purposes will remain and therefore satisfies this objective.
- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***
Comment: The application seeks no modification to the existing and approved use of the land, which is considered to be most appropriate in the context of the street and surrounds, thereby satisfying this objective.
- ***To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.***
Comment: It is acknowledged that the site (both existing and as proposed) is beneath the minimum landscaped open space provision as per Part D1 of the WDCP 2011. Despite this variation, the site has a number of rock escarpments and two large mature trees which are all sought to be retained as a part of this application. These feature elements are all desirable and contribute to the landscaped setting that is in harmony with the natural environment of the Northern Beaches, thereby satisfying this objective.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?

(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.

Comment: The existence of Clause 4.6 is to grant the consent authority the ability to vary development standards in circumstances where it is deemed appropriate. Thereby it is necessary to establish whether or not, in this particular circumstance, it is appropriate to allow for a degree of flexibility in applying the Height of Buildings development standard.

The circumstances of this particular application are unique in that the building is sited toward the rear of the allotment whereas all neighbouring properties are positioned as close to the street frontage as possible, thereby positioning the subject dwelling some 15m behind the general building line. By being located so far back, the dwelling is sited atop and within the topography of the land (by virtue of existing excavation) and is already at a height that is greater than some surrounding properties, simply due to the positioning of the building.

Additionally unique in the circumstances of the case, besides the building siting, is that the ridge line of the development is not being increased under this application, rather, the existing second storey is being increased in floor area to match the first floor below, and this increase in floor space modifies the existing 'rooms within a roof' form to become a whole new level not within the roof.

On the south-eastern facade of the development the northern corner exceeds the maximum height standard by approximately 2.2m and for an area of approximately 4.6m².

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On the north-western facade of the development the corner exceeds the maximum height standard by approximately 2.1m, generally on the wall abutting the sloping roof above the internal stairwell, and this encroachment exists for an area of approximately 5.6m².

Both encroachments are demonstrated in the above Figures 1 and 2, and are in the form of gradually diminishing triangles. Whilst the technical building height measurement equates to a variation of 35.8% and a breach of approximately 3m, the perceived and visible areas of encroachment from surrounding properties are not considered to be significant.

Therefore the degree of flexibility being sought relates to both the lesser-seen numerical non-compliance, and the two areas on both side facades that visibly exceed the height standard.

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

Comment: In the circumstances of this particular application it is not found that the portion of the development encroaching the building height standard gives rise to any unreasonable adverse amenity impacts upon adjoining land by virtue of visual impact, overshadowing, privacy or view loss. It is noted that a submission received raises privacy (both visual and acoustic) as a primary concern with the application, however it is not considered that these are resultant of the height of the building directly.

To achieve the same provision of floor space of what is being sought in this application the dwelling would be required to extend northwards towards the street which could be done achieving full compliance with all built form controls and height controls. However, by redistributing the floor space in this manner it is likely that privacy issues and visual impact would be exacerbated by the lengthening of the building and that the streetscape and ecology of the area would be significantly impacted upon by the likely required removal of the two mature trees in the front setback.

Thereby, given that there are no direct impacts consequent of the variation sought, the general compatibility of the development within the streetscape and the fact that a complying proposal could give rise to a worse environmental impact, undesirable amenity impacts and loss of trees on the site, it is considered that allowing flexibility to the Height of Buildings development standard in this particular circumstance achieves a satisfactory outcome, better than other alternate design solutions.

(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 for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

Comment: It is considered to enforcing strict compliance with the development standard is

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unreasonable in the circumstances of the case as it would impinge on the opportunities of developing the site in a manner that would be considered appropriate with regards to the amenity of surrounding lands and the natural attributes of the site. It is considered unnecessary to enforce strict compliance as no direct impact of the variation to the building height standard is of such a magnitude that would warrant the refusal of the application, regardless of whether it was complying with standard or not. Given the minimal amenity impacts, the retention of the existing footprint and ridge height and the consideration of alternative complying design solutions, it is found that there are sufficient environmental planning grounds to justify the contravention of the development standard pursuant to Clause 4.6.

The Applicant's written request, *Clause 4.6 Exceptions to Development Standards* dated November 2017 by Norrskén Ko. is considered to satisfactorily address the requirements of Clause 4.3 (3) and is not dissimilar to the findings of Council in this Assessment Report.

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

(a) the consent authority is satisfied that:

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

Comment: The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

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

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone in the WLEP 2011.

(b) the concurrence of the Director-General has been obtained

Comment: Planning Circular PS 17-006 dated 15 December 2017, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. Following the release of PS 17-006, Council received correspondence from a delegate of the Secretary which granted Council staff, for 12 months from 1 March 2018, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary the building height standard by more than 10%. Accordingly, the Secretary's concurrence can be assumed for this application as it is a Class 1 building and is being determined within 12 months of 1 March 2018. The determining authority for this particular application will be the Northern Beaches Development Determination Panel.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Existing*	Proposed	%	Complies
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				Variation*	
B1 Wall height	7.2m	Approx. 10.0m	10.9m	48.7%	No
B3 Side Boundary Envelope	North west - 5.0m	Up to a height of approximately 2.3m	Encroachment at a height of 4.9m and for a length of 15m	98%	No
	South east - 5.0m	Up to a height of approximately 3.0m	Encroachment at a height of 3.0m and for a length of 9.6m	60%	No
B5 Side Boundary Setbacks	North west 0.9m	0.9m	0.9m	-	Yes
	South east - 0.9m	Dwelling - 2.8m - 3.3m	Dwelling - 1.8m - 2.7m	-	Yes
B7 Front Boundary Setbacks	6.5m	Dwelling - 16m	Dwelling - 16.8m	-	Yes
B9 Rear Boundary Setbacks	6.0m	Dwelling - 4.9m - 7.8m	Dwelling - 4.3m - 7.8m	28.4%	No
		Deck - 4.2m	Deck - 4.2m	30%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (220m ²)	15.7% (87m ²)	19% (105m ²)	54.6%	No

*a review of the existing dwelling and non-compliances is provided to allow perspective between the existing and the proposed works.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

The development breaches the 7.2m wall height control by up to 48.7% and measures a total height (from existing ground level to the uppermost portion of the ceiling) of 10.9m. An assessment of the variation sought against the control objects follows:

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

Comment: The site is positioned on the high-side of Undercliff Road which has a prevalence of large, multi-storey dwelling houses of varying architectural styles. The contemporary and modular architectural form proposed in this application is sympathetic to the existing dwelling on site via the retention of the exposed brick and the upper floor addition is sufficiently contrasted in terms of materials to present an interesting form within the streetscape.

The height of the development above the street level, and the variation to the wall height control sought, do not contribute to the proposed development being perceived as excessively visually bulky when viewed from the public and private domain and therefore satisfies this objectives.

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

Comment: The development is retaining the two large existing trees in the front yard of the site and the proposed height is lesser than these trees. Additionally, given the topography of the land, the vegetation towards the rear of the allotment is at a height greater than the development,



thereby satisfying this objective.

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

Comment: A detailed analysis on view sharing can be found in part D7 of this report.

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

Comment: The variation sought to the wall height control does not give rise to any unreasonable or adverse amenity impact upon surrounding and nearby properties.

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

Comment: The development is predominantly an upwards addition to the existing dwelling and doesn't require excavation. The front of the site is to have a new set of entry stairs constructed given the 6m rise from street level to the lower ground floor level and these works require minor excavation and ground works, but not of such a magnitude that would be considered unreasonable. Additionally, the excavation works sought do not contribute to the wall height variation sought and thereby satisfy this object.

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

Comment: The roof form selected is considered to be an appropriate solution for both the site and the surrounding streetscape.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B3 Side Boundary Envelope

The proposed second floor extension breaches the side boundary envelope control by up to 4.9m on the north western facade (98% variation) and up to 3.0m on the south eastern facade (60% variation). An assessment of the variations sought against the control object follows:

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

Comment: The variations sought to the side boundary envelope control are not considered to be unreasonably visually dominant given the well designed architectural form of the proposal, the retention of the two large trees in the front setback and the retention of the existing building ridge height. The portions of the dwelling which encroach the envelope are well set back from the street (approximately 20 - 25m) and will be largely visually obstructed from existing surrounding developments.

Within the eclectic Undercliff Road streetscape where sites are dominated by large, multi-storey



dwelling, the proposed will suitably respond to the site and surrounds, thereby satisfying this objective.

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

Comment: The encroachments sought to the side boundary envelope control are considered to be acceptable with regards to lighting and solar access, and privacy via spatial separation.

The development does not cause overshadowing to surrounding properties that would be of a magnitude to warrant it non-compliant in accordance with the relevant controls of the DCP.

Privacy impact is considered most prevalent on the south eastern facade, and the spatial separation of the building (2.86m to 3.3m) provides an adequate buffer to restrict overlooking. Notwithstanding, a more in depth discussion on the provision of privacy can be found elsewhere in this report.

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

Comment: The development does not propose any significant modifications to the topography of the site further than what already exists.

The site would be capable of complying with the envelope control is the proposed second storey additions were in the form of a 'room within a roof', however this would have no material impact on the provision of amenity and would significantly decrease the aesthetic value of the architectural form proposed. Therefore, the proposed development is considered to be reasonable on the site and responds to the topography of the land.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

The existing double garage which encroaches in the front setback area of the site is not proposed to be modified as a part of this application and thereby does not warrant any further assessment.

B9 Rear Boundary Setbacks

The dwelling and proposed rear deck encroach within the 6m rear setback area by up to 1.8m representing a 30% variation to the control. An assessment of the variation against the control objects follows:

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

Comment: The rear portion of the site does not have an adequate soil depth to accommodate deep soil landscaping given the natural rock escarpment. Therefore, opportunities for deep soil landscaping are not reduced by the encroachment.



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

Comment: The deck creates a sense of openness in the rear yard by making the space usable and active, and the building encroachment into the rear setback area is largely existing. It is considered that, given the topography of the land and the existing building on site, that a sense of openness is not unreasonably detracted.

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

Comment: The encroachment of the building into the rear setback area does not give rise to any adverse privacy impacts, however the proposed replacement of the timber deck and stair currently overlook the rear yard of No. 41 Undercliff Street and should be resolved as a part of this application.

It is considered that a reasonable solution to the overlooking is to require that the balustrade of the staircase between the two terrace levels and the northern facing balustrade of the upper-most timber deck be of a solid finish not less than 1.0m in height, and that the portion of the deck which has a nil setback to the south-eastern boundary have a 1.65m high privacy screen measured from the finished deck level.

These matters are discussed in greater detail elsewhere in this report and are included as conditions of consent.

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

Comment: The development retains the existing visual pattern of buildings on the site and is not inconsistent with other developments in the R2 zone.

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

Comment: Refer to discussions elsewhere throughout this report.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

The development seeks a 54.6% variation to the Landscaped Open Space (LOS) control which requires that 40% of the site area be landscaped.

Presently the site achieves an LOS of 21%, and this application will reduce the provision of LOS to 19% (less approximately 13m²). An assessment on the variation sought against the control objects follows:



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

Comment: The site inclines steeply from the streetscape which can lead to the presentation of the dwelling as being large in scale when viewed from the public domain. The works proposed in this application rationalise the existing landscaped areas into a more formal configuration which will not only be more visually appealing, but will allow for the establishment of larger vegetation given the increased landscaped areas that will contribute to enhancing the streetscape.

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

Comment: The site has two large trees (thought to be Norfolk Island Pines) in the front setback area which are to be retained as a part of this development and preserving existing habitats for wildlife. Additionally, the new landscaped areas will allow for the planting of indigenous vegetation. The works proposed throughout the site are not considered to give rise to any unreasonable impact on the rock escarpment, particularly to the rear of the site. This has been conditioned according to ensure the rock escarpment protection and preservation.

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

Comment: As established, the rationalised landscaped areas increase the opportunities on the site to provide landscaping to mitigate the height, bulk and scale of the building.

- ***To enhance privacy between buildings.***

Comment: The landscaping proposed is considered to enhance privacy between dwellings by obstructing direct sightlines from different windows and terraces.

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

Comment: The site has sufficient scope to accommodate outdoor recreational opportunities that meet the reasonable needs of the occupants.

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

Comment: Sufficient space for service functions are provided throughout the site.

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

Comment: The application does not seek modification to the existing stormwater detention system on the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the
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Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D7 Views

During the assessment of this application a submission was received from the owners of No. 19 Highview Avenue, Queenscliff which raised concern regarding potential view loss consequent of the proposed development. Council visited the objecting property on 18 January 2018 to observe the view loss and to make the following assessment:

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

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1: The objecting property has expansive panoramic views given it's elevated position atop of a cliff. At present the subject dwelling is not visible from the objecting site due to thick vegetation that is present on 9 and 19 Highview Avenue and 37 and 39 Undercliff Road. The objector's concern was predominantly with regard to 'future views' of if and when said vegetation is to be removed. Therefore, strictly speaking, the proposed application will have no impact on the existing provision of views (obscured by vegetation). It is considered that if the vegetation were not to be present, that the development may obstruct south and south-westerly views of Freshwater Beach and the ocean. It is not considered that the development would obstruct any land-water interface views or headland views.

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

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

Comment to Principle 2: At present the views across the site are unobtainable given the vegetation. A review of the architectural plans for 19 Highview reveal that the 'lower-ground' floor level is at the same level of the highest point of the roof proposed at the subject site (which is the same as the existing roof ridge RL). Therefore it can readily be assumed that the views,



notwithstanding the existence of vegetation, could be obtainable from both a sitting and a standing position.

The views are obtainable over a side boundary of the subject development site.

3. Extent of impact

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

Comment to Principle 3: As discussed, the impact of the development will have a negligible impact on the existing provision of views given the vegetation present.

The rooms in the objecting dwelling that could gain views over the site if the vegetation were to be removed are the lower ground level lounge room and deck, and the upper ground floor living, dining and deck. It is not anticipated that the views would be obstructed from the primary living areas on the upper ground floor given the elevated position, and that views from the lower ground floor may be obstructed to a minor degree (albeit there is no opportunity to fully assess the impact without the view being present) given that the floor level of the lower ground level is at the same height of the roof ridge located some 20 - 25m away.

Therefore, this assessment must conclude that the view loss experienced by the development is minor.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4: The development has a number of significant non-compliances with the built form controls and principal development controls which are largely consequent of the existing dwelling on site and the natural topography of the land. The application is, in essence, squaring off the existing roof form and converting it into habitable space, retaining the existing roof ridge level. The views enjoyed from 19 Highview Avenue are panoramic and vast but are vulnerable to impact by the redevelopment of surrounding properties, given its elevated position and views over the top of the existing roof lines.



It is considered both unreasonable and unnecessary in this circumstance to reduce the existing building height and the development potential of the site in order to preserve some ocean views which may or may not be impacted upon, do not presently exist given the presence of vegetation and only form a minor portion of the panoramic views enjoyed from the objecting property. It is found that the view loss, with or without the vegetation, is acceptable and satisfies the consideration of the fourth step of the planning principle.

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

Comment: The development proposed will update the existing dated development and will present as an innovative design solution that will enhance the urban environment.

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

Comment: Existing canopy trees have priority over views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8 Privacy

First floor south-eastern deck (RL32.70):

- Existing deck reduced in size from 50m² to 25m²;
- Currently accessible from kitchen, lounge room and dining room;
- Proposed to only be accessible from a bedroom, study and laundry;
- Proposal upgrades the existing deck only and does not change the existing height.

Second floor rear deck (RL35.67):

- Existing deck - no changes to size proposed, only upgraded/replaced;
- Currently only accessible externally;
- Proposed to be accessible from second floor extension and externally.

Second floor front deck (RL35.79):

- New deck in place of existing roof structure;
- Predominantly north facing and overlooking the roof of the adjoining dwelling;
- 4.0m x 1.4m wrap around deck element that could give rise to some overlooking, however not a primary aspect or sightline

W302 and W303 on first floor south eastern facade:

- New windows;
- Approximately 7.0m - 8.0m elevated above adjoining property's private open space;
- Privacy treatment up to a height of 1.2m.

The overall design is found to improve the existing provision of privacy that exists between the two dwellings by removing the large wrap around deck at first floor and replacing it with a much smaller (50% smaller) service deck (accessible from the laundry). The use of the rooms adjoining the deck are of a use lesser used



than primary living spaces, as is the case currently, and are not as likely to be used frequently. Notwithstanding, the degree of overlooking is severe and it is considered reasonable to condition a 1.65m privacy screen along the south-eastern edge of this deck to preserve privacy without impacting on solar access. It is noted that the objector likely did not have access to the internal floor plans of the proposal to establish the use of the rooms.

The second floor rear deck is existing and is only being upgraded as a part of this application. Given the elevation, the large dominating rock escarpment and the presence of existing vegetation, it is considered unwarranted to require a privacy screen in this location. It is however considered reasonable to impose a condition which requires all balustrade to the deck and external stairwell to be translucent in finish to obstruct direct sightlines into the neighbouring yard. Views may still be obtainable if a person is standing on the very edge of the deck and is looking downwards and not towards the primary view.

The second floor front deck will largely overlook the roof of the objecting property and, from the primary area of the deck, won't obtain direct views into the rear yard of No. 41 Undercliff Road. The small wrap around section of the front deck is minor in size and is not a primary entertaining area. The purpose of this deck is to provide articulation to the building and to allow opportunities for a wider viewing angle of the ocean in the distance. The degree of overlooking from this deck is considered reasonable.

The two south eastern facing windows on the second floor of the development have the potential to overlook the adjoining property, however a person would have to be standing at the window base and looking downwards; instead of towards the primary viewing aspect which is straight forward.

The overall provision of privacy is enhanced by this development. Whilst complete privacy is not provided to the subject and objecting property, the degree of overlooking proposed is considered to be acceptable within a dense residential environment and upon a steep and varying topography.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan	
Contribution based on a total development cost of \$ 600,000	



Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 5,700
Section 94A Planning and Administration	0.05%	\$ 300
Total	1%	\$ 6,000

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

The proposed development for alterations and additions to the existing dwelling is considered to be a substantial upgrade to the existing outdated dwelling on the site and will, by virtue of contemporary architecture, enhance the streetscape aesthetic and functionality of the building. Despite significantly contravening the Height of Buildings development standard, the development overall is found to have no unreasonable nor adverse amenity impacts upon adjoining lands, and it is similarly found that a complying development on the same site would likely have a greater impact than what is proposed.

The proposed development will not cause view loss to a magnitude that would warrant modification of the application, and similarly will not cause unreasonable overshadowing, visual impact of excessive overlooking. Notwithstanding, conditions are appropriately imposed in the recommendations of this report to add privacy screening along portions of the south-western boundary.

This Assessment Report recommends the conditional approval of the development application by the Northern Beaches Development Determination Panel.

It is considered that the proposed development satisfies the appropriate controls and that all processes and



assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2017/1151 for Alterations and additions to a dwelling house on land at Lot 22 DP 17127, 39 Undercliff Road, FRESHWATER, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-DA-100-001 Rev. A	28 February 2018	Norrsken Ko.
A-DA-102-001 Rev. A	28 February 2018	Norrsken Ko.
A-DA-102-002 Rev. A	28 February 2018	Norrsken Ko.
A-DA-102-003 Rev. A	28 February 2018	Norrsken Ko.
A-DA-102-004 Rev. A	28 February 2018	Norrsken Ko.
A-DA-110-001 Rev. A	28 February 2018	Norrsken Ko.
A-DA-110-002 Rev. A	28 February 2018	Norrsken Ko.
A-DA-110-003 Rev. A	28 February 2018	Norrsken Ko.
A-DA-200-001 Rev. A	28 February 2018	Norrsken Ko.
A-DA-200-002 Rev. A	28 February 2018	Norrsken Ko.
A-DA-200-003 Rev. A	28 February 2018	Norrsken Ko.
A-DA-200-004 Rev. A	28 February 2018	Norrsken Ko.
A-DA-300-001 Rev. A	28 February 2018	Norrsken Ko.
A-DA-300-002 Rev. A	28 February 2018	Norrsken Ko.
A-DA-300-003 Rev. A	28 February 2018	Norrsken Ko.
A-DA-300-004 Rev. A	28 February 2018	Norrsken Ko.
A-DA-300-005 Rev. A	28 February 2018	Norrsken Ko.
A-DA-900-001 Rev. A	28 February 2018	Norrsken Ko.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A299922)04	24 November	Norssken Kolektiv

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	2017	
Preliminary Geotechnical Assessment J1545	23 November 2017	White Geotechnical Group

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Report Title	Dated	Prepared By
Waste Management Plan	23 November 2017	Norrskan Ko.

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

2. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- Translucent glazing or privacy screening is to be installed up to a height of 1200mm measured from finished floor level for windows W302 and W303 on the south eastern facade of the dwelling (as detailed on A-DA-200-002 Rev. A).
- The balustrade of the timber deck at the rear of the property at RL35.67 and the associated external staircase is to have a balustrade of a solid or translucent finish.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land. (DACPLB02)

3. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house.

A dwelling house is defined as: *a building containing only one dwelling.*

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

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

Reason: To ensure compliance with the terms of this consent. (DACPLB03)

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4. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority 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 Certifying Authority 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 Certifying Authority 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 (DACPLB09)

5. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) 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.
- (d) 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.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths,



roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

- (j) 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.
- (k) 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 2008
 - (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. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Council Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development

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Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 600,000.00		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 5,700.00
Section 94A Planning and Administration	0.05%	\$ 300.00
Total	1%	\$ 6,000.00

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with Northern Beaches Council's Development Contributions Plan.

7. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, details demonstrating payment are to be submitted to the Certifying Authority 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.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

8. **Tree Protection Plan**

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In order to protect and enhance onsite vegetation and trees the following applies to the development site:

(a) A Tree Protection Plan prepared by a AQF Level 5 Arborist (or equivalent) showing the following:

- Layout of the approved development
- Location of trees identified for retention
- Extent of canopy spread
- Location of tree protection fencing / barriers (fencing in accordance with AS2470 – 2009)
- General tree protection measures

(b) The Tree Protection Plan is to be submitted to the Principal Certifying Authority for approval prior to issue of a Construction Certificate.

(c) Tree protection measures identified on the plan are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

9. **Compliance with Standards**

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

10. **Privacy Screen**

A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost south-eastern edge of the deck located at first floor level off the bedroom 3, home office and laundry as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

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

11. **Sewer / Water Quickcheck**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

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

- Quick Check agents details - see Building Developing and Plumbing then Quick

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- Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water.
(DACPLC12)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. Tree protection

- (a) Existing trees which must be retained
 - i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
 - ii) Trees located on adjoining land
- (b) Tree protection
 - i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
 - ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
 - iii) All tree protection to be in accordance with the approved tree protection plan and AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
 - iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
 - v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. Maintenance of Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety. (DACENE09)

14. 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 Certifying Authority.

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

15. Trees Condition

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all



identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees. (DACLAEO3)

16. Protection of rock and sites of significance

- a) 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.
- b) 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 are to be contacted.

Reason: Preservation of significant environmental features (DACLAEOG1)

17. Aboriginal Heritage

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

18. Installation and Maintenance of Sediment Control

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To protect the environment from the effects of sedimentation and erosion from
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development sites.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

19. **Stormwater Disposal**

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

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

20. **Removal of All Temporary Structures/Material and Construction Rubbish**

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

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure bushland management. (DACPLF01)

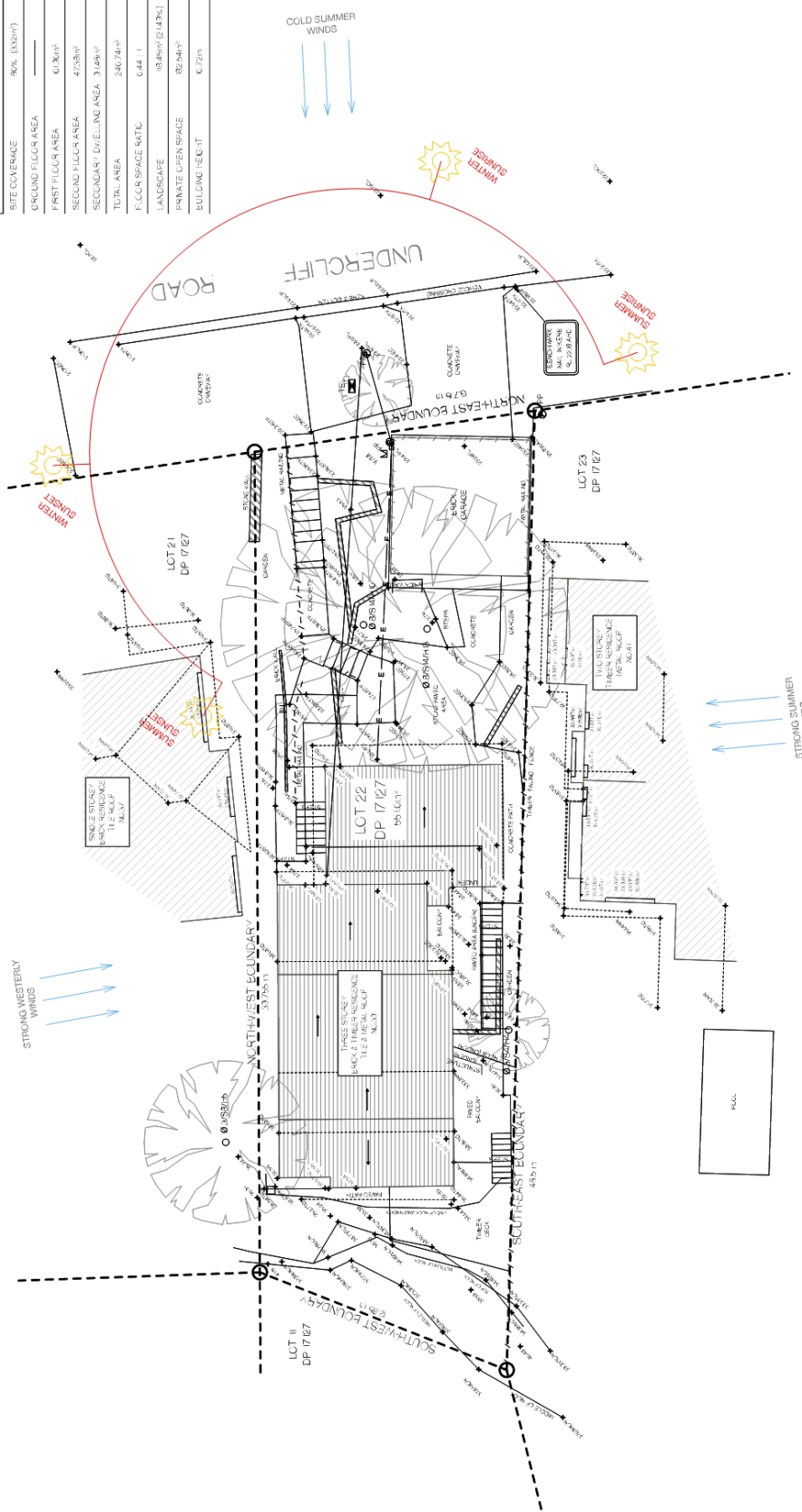
21. **Waste Management Confirmation**

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

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

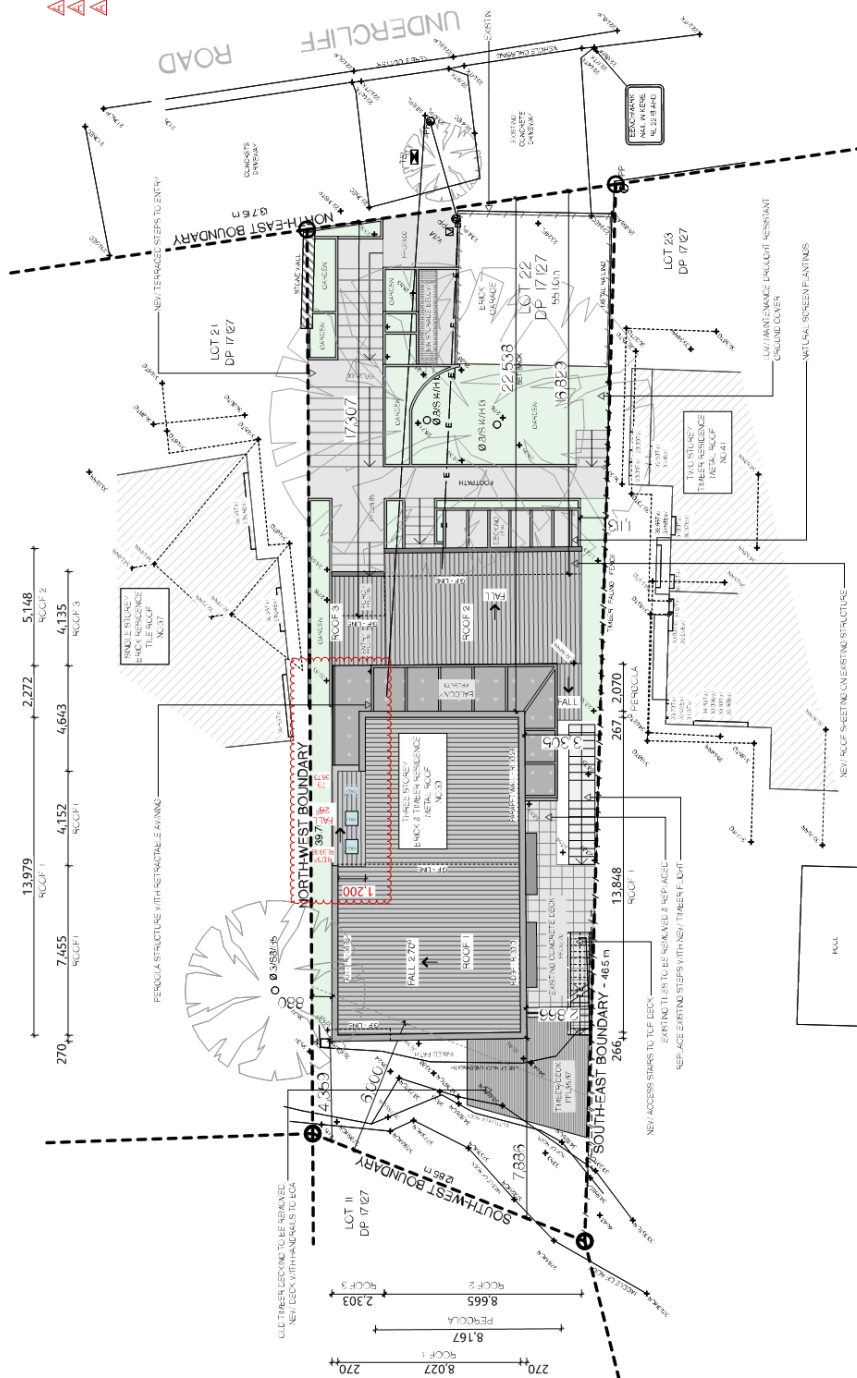
EXISTING CALCULATIONS

EXISTING	FRONTAGE 637.50'
SITE AREA 55.11 [±]	
PERCENT COVERAGE 96% (33207)	
GROUND FLOOR AREA	
FIRST FLOOR AREA 47307 [±]	
SECOND FLOOR AREA 47307 [±]	
SECONDARY DIVIDING AREA 1489 [±]	
TOTAL AREA 24074 [±]	
FLOOR SPACE RATIO 0.44 : 1	
LANDSCAPE	
PRIVATE OPEN SPACE 8244 [±]	
BUILDING HEIGHT 6/2m	

[illegible]

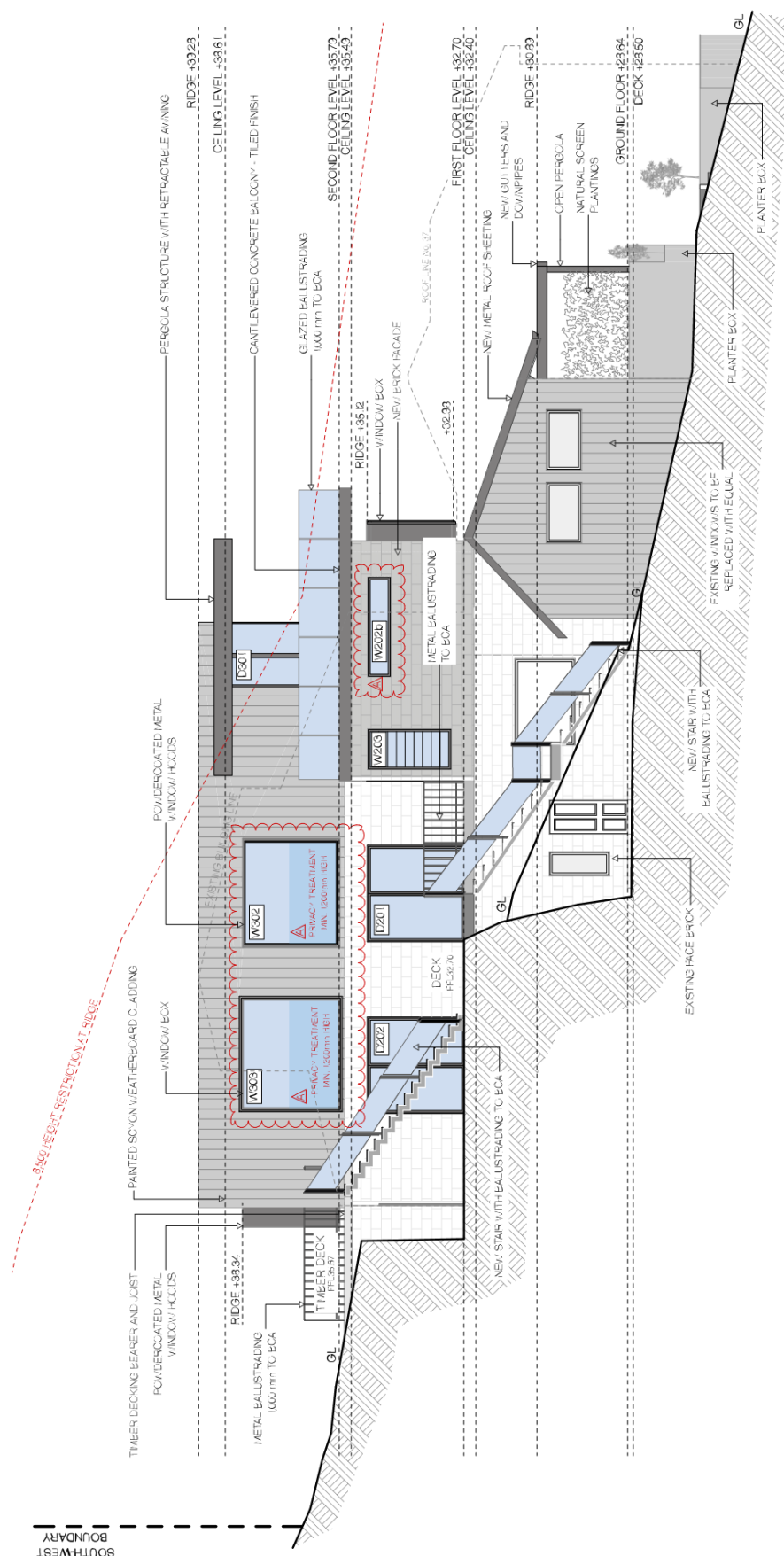
**DEVELOPMENT
APPLICATION TABLE**

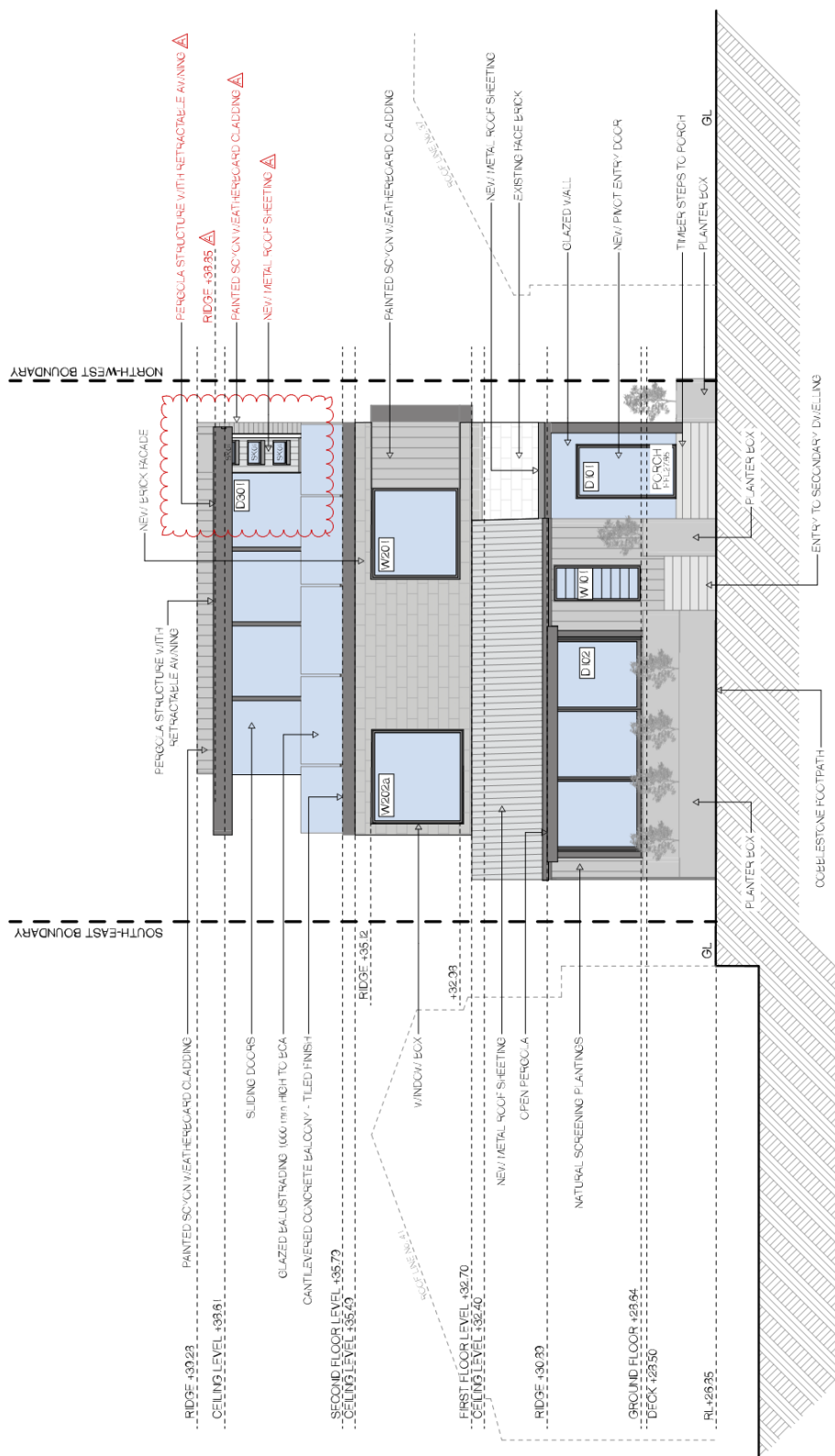
DESCRIPTION	EXISTING	PROPOSED
SITE AREA 55.1m ²	FRONTAGE 157.5m	
SITE COVERAGE 86% (47.9m ²)		
GRAND FLOOR AREA		4.38m ²
FIRST FLOOR AREA	10.00m ²	12.75m ²
SECOND FLOOR AREA	47.33m ²	64.54m ²
SECONDARY DWELLING	3.44m ²	70.26m ²
TOTAL FLOOR AREA	54.07m ²	130.06m ²
FLOOR SPACE RATIO	0.44:1	0.45:1
LANDSCAPE	10.49m ² (2.43%)	10.53m ² (3.17%)
PRIVATE OPEN SPACE	82.54m ²	83.37m ²
BUILDING HEIGHT	0/2m	10.5m

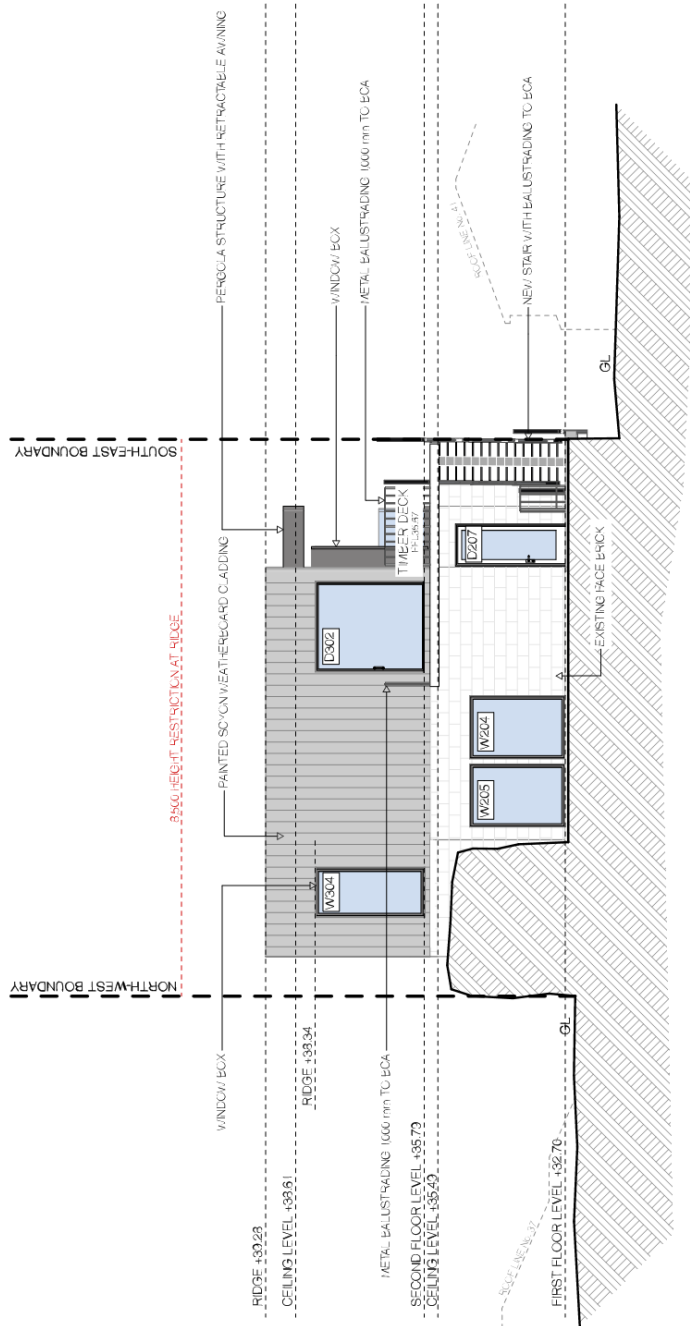


<p>DEVELOPMENT APPLICATION SITE, ROOF & LANDSCAPE PLAN</p> <p>PROJECT NO: NSK 1708 DRAWN: CN CHECKED: AJJ SCALE: 1200 @ A3 FIRST ISSUE: 07/03/18 DRAWING NO: REV</p>		<p>A-DA-100-002</p> <p>NOT FOR CONSTRUCTION</p>	
<p>ALTERATION & ADDITIONS</p> <p>PROJECT: ALLOCATION 53 UNDERCLIFF ROAD, FRESHWATER, NSW, 2034</p> <p>TITLE DESCRIPTION: LOT 22 - DP 17/27 - 55.1m²</p> <p>PLANNING: TOTAL SURVEYING SOLUTIONS</p> <p>CLIENT: JORDAN & LISA REIZES</p>		<p>NOTES</p> <p>ALL CONSTRUCTION AND DEMOLITION WORKS TO COMPLY WITH THE PROVISIONS OF THE BUILDING CODE OF AUSTRALIA.</p> <p>MEASUREMENTS TO BE CHECKED ON SITE AND ADJUSTED TO REFLECT ACTUAL CONDITIONS. DISCREPANCIES BETWEEN ARCHITECTURAL & SURVEYING DATA ARE TO BE RESOLVED BY THE ARCHITECT.</p> <p>LEVELS & SLOPES OBTAINED FROM INITIAL SITE WORKS.</p> <p>TERMINATE PROTECTION SYSTEM TO BE USED IN THE PROTECTION AGAINST SUBSTANTIAL EMISSIONS IN MANUFACTURE OR PROCESSING.</p>	
<p>LEGEND</p> <p>Norrsken Ko.</p> <p>100 Harris Street Pyrmont NSW 2009 AUSTRALIA helix@norrskenko.com.au www.norrskenko.com.au 0402 518 227</p>		<p>NOT FOR CONSTRUCTION</p>	



[illegible]

[illegible]



<p>Norrskan Ko.</p> <p>100 Harris Street Pyrmont NSW 2009 AUSTRALIA hel@norrskan.co.nz www.norrskan.co.nz 0402 15 11 227</p>	<p>LEGEND</p> <p>NOTES</p> <p>ALL CONSTRUCTION AND DEMOLITION WORKS TO COMPLY WITH THE PROVISIONS OF THE BUILDING CODE OF AUSTRALIA.</p> <p>MEASUREMENTS TO BE CHECKED ON SITE AND ADJUSTED AS NECESSARY TO MATCH EXISTING CONDITIONS.</p> <p>DISCREPANCIES BETWEEN ARCHITECTURAL & STRUCTURAL DOCUMENTATION, STRUCTURAL DRAWINGS & SITE SURVEYING SOLUTIONS SHALL BE RESOLVED BY THE ARCHITECT.</p> <p>THESE DRAWINGS ARE PRELIMINARY. SITE WORKS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROTECTION SYSTEM TO BE USED IN THE PROTECTION AGAINST SUBSTANTIAL EMISSIONS IN MANUFACTURING SPECIFICATIONS.</p>	<p>PROJECT</p> <p>ALTERATION & ADDITIONS</p> <p>PROJECT ADDRESS: 53 UNDERCLIFF ROAD, FRESHWATER, NSW 1505</p> <p>TITLE DESCRIPTION: LOT 22 - DP 17127 - 5510m²</p> <p>CLIENT: TOTAL SURVEYING SOLUTIONS</p> <p>CLIENT: JORDAN & LISA REIZES</p>	<p>PROJECT</p> <p>ALTERATION & ADDITIONS</p> <p>PROJECT ADDRESS: 53 UNDERCLIFF ROAD, FRESHWATER, NSW 1505</p> <p>TITLE DESCRIPTION: LOT 22 - DP 17127 - 5510m²</p> <p>CLIENT: TOTAL SURVEYING SOLUTIONS</p> <p>CLIENT: JORDAN & LISA REIZES</p>	<p>DEVELOPMENT APPLICATION SOUTH/WEST ELEVATION</p> <p>PROJECT NO: NSK 1708</p> <p>DRAWN: CN</p> <p>CHECKED: AN</p> <p>SCALE: 1:100 @ A3</p> <p>FIRST ISSUE: 07/03/18</p> <p>DRAWING NO: A</p>
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ITEM 3.4 **DA 230/2015 - 21 BELGRAVE STREET MANLY - SECTION 96(2)
TO MODIFY APPROVED ALTERATIONS AND ADDITIONS TO
EXISTING BUILDING - PART 3**

REPORTING MANAGER **Rodney Piggott**
TRIM FILE REF **2018/213966**
ATTACHMENTS 1 [↓](#) **Assessment Report**
 2 [↓](#) **Site and Elevation Plans**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. 230/2015 for alterations and additions to existing building at 21 Belgrave Street, Manly be **Approved** subject to the conditions outlined in the report.



northern
beaches
council

Development Determination Panel Report

2017/059536

DA #	230/2015
Site Address	21 Belgrave Street, Manly Lots 1 and 2 DP 1235364
Proposal	Section 96 (2) to modify approved alterations and additions to existing building - Part 3
Officer	Claire Ryan

SUMMARY:

Application Lodged:	17 November 2017
Applicant:	Thanh Quach
Owner:	Belgrave Street Developments Pty Ltd
Estimated Cost:	\$12,784,723
Zoning:	MLEP, 2013 – B2 Local Centre
Heritage:	Town Centre Conservation Area
NSW LEC:	Not applicable
Notification:	27 November – 13 December 2017
Submissions received:	Nil
Site Inspected:	15 January 2018
LEP (4.6) Variations proposed:	Nil
DCP Variations proposed:	Nil
Recommendation:	Approval

Subject Property and surrounding area



B1, B2, B6, IN2 & SP3 Zones – S96

1 of 26

The subject property is commonly known as 21 Belgrave Street, Manly and legally known as Lots 1 and 2 DP 1235364. The site is located on the eastern side of Belgrave Street and is a corner lot also adjoining Sydney Road and Whistler Street. The property is irregular in shape, has a frontage of 28.635m to Belgrave Street, 28.35m to Sydney Road, and 31.69m to Whistler Street, and an overall site area of 993m². The property currently contains the Telstra Exchange building on a portion of the site. The remainder of the site is under construction. The property is level. Development in the surrounding area includes commercial and mixed use developments, and recreation facilities.

Property Burdens and Constraints

There are no burdens or constraints that would preclude the proposed development.

Site History/Background

Recent relevant applications on site include:

- DA230/2015: Alterations and additions to existing Telstra building including Construction of a new shop top housing development and Stratum Subdivision. Approved by MIAP on 21 April 2016.
- DA230/2015 – Part 2: Section 96 to modify approved Alterations and additions to existing Telstra building including Construction of a new shop top housing development and Stratum Subdivision – The modifications included internal reconfiguration of commercial and residential areas, alterations to the roof form including skylights, modifications to façade, removal of Telstra antennas, reallocation of three (3) parking spaces, redesign of car stacker, and changes to conditions. Approved by DAU on 22 February 2017.

At the time of submission of this application, Section 96(2) applications were required to be determined at the same level as the original application. In this case, the application was to be determined by the Northern Beaches Independent Assessment Panel (formerly known as Manly Independent Assessment Panel – MIAP).

On 1 March 2018, the criteria for the newly formed Local Planning Panels (at the same level of authority as the former Independent Assessment Panel) came into effect, which do not require Section 96(2) applications to be determined at the same level as the original application. As such, the application has been forwarded to Council's Development Determination Panel (DDP) for determination.

Description of proposed development

The proposal seeks consent for the following modifications to the approved development:

- Conversion of two ground floor retail tenancy in to three retail tenancies (No additional GFA);
- Conversion of first floor retail tenancies into two residential apartments (resulting in an increase from 24 to 26 apartments and a reduction of 30m² GFA);
- Minor façade changes; and
- Reduction in awning along Whistler Street.

Internal Referrals

Engineering Comments

Council's Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Building Comments

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Heritage Comments

Council's Heritage Officer has commented on the proposal as follows:

"The application is a S.96, substantially the same as the originally approved DA. Therefore, it is fair to assess that impact of the current proposal will be closely similar to the impact of the previously approved DA. Based on the above, I have no objection to this proposal from heritage perspective and deem heritage conditions not required. "

Waste Comments

Council's Waste Officer originally commented on the proposal as follows:

"Proposed residential waste storage area is inadequate to house the required waste and recycling bins. Amended plans to be submitted showing adequate residential bin storage as per below conditions.

Waste management plans indicate that the applicant intends to engage the services of a private waste collection contractor for residential and commercial waste. Please note, all residential properties are charged a domestic waste service charge on the property Rates, regardless of whether the service is utilised. Furthermore, all properties are required to provide waste bin storage capable of housing Council's standard issue of waste and recycling bins should Council services be required at a future date.

Council records contain an architectural drawing No. 104 Revision K (June 2017) which, while not part of the application, details a mixed-use commercial and residential bin store with capacity to store a total of just 16 x 240 litre bins. Please note, this configuration would not be permitted as separate residential and commercial bin storage rooms are required. 16 x 240 litre bins is also an insufficient quantity of bins as per below conditions...

Condition ANS08 in the original consent partly omitted conditions issued by Emma Lynch relating to bin storage capacity. Reconfiguration of residential and commercial/retail units has also resulted in an increase in the total number of dwellings and commercial/retail units. Additional non-standard conditions are therefore provided...to address residential and commercial waste storage and collection requirements:"

Assessing Officer Comment

Following provision of the above advice to the Applicant, a meeting was held between the Assessing Officer, the Waste Officer, Executive Manager Waste Management & Cleansing, and representatives of the Applicant on 24 January 2018 to discuss waste management and storage. Following the meeting, Council's Waste Officer provided the following comments:

"Please record that during our meeting of 24/1/2018, the following matters were agreed between Council and representatives of the applicant:

- 1. It was noted by all parties that Council is required to levy a domestic waste service charge on every residential property, regardless of whether a private waste collection contractor is engaged to provide residential waste services. It was further noted that it is not possible for residential waste to be serviced by a combination of Council and private contractor. It was agreed that Grocon is responsible for notifying property owners about this arrangement, in perpetuity.*
- 2. It was stated that street parking on Whistler Street prohibits vehicle access to the property, which would include waste collection vehicle access to service waste and recycling bins from the basement level bin stores.*

3. *It was stated that the driveway and vehicle turntable configuration restricts the type of waste collection vehicle capable of entering the site to models that can service 240 litre bins only, and not 660 litre bins as proposed in the Waste Management Plan (August 2016). The proposal therefore no longer meets Condition ANS08 from the original consent, which states that a total of 21 x 240 litres bins are required for residential waste. It was however noted that errors in the wording of Condition ANS08 led to the understanding that an alternative configuration of 3 x 660 litre bins (totalling 1,980 litres) would satisfy residential waste storage requirements.*
4. *It was stated that the site configuration may restrict the communal storage and collection of bulky waste.*

It is therefore my current assessment that the application be refused due to insufficient waste storage provision and inability for waste to be collected from within the property."

Since the Waste Officer made these comments, the Applicant has provided an amended Waste Management Report, detailing adequate responses to the above concerns. Subsequently, the Waste Officer is supportive of the application, subject to conditions of consent, which have been applied to the recommendation.

Environmental Health

Council's Environmental Health Officer offered no objections to the proposal, subject to the imposition of original recommended conditions of consent.

External Referrals

No external referrals were considered necessary.

Planning Comments

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*
 - (i) *any environmental planning instrument, and*

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and Apartment Design Guide (ADG)

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

- (1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:
 - (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
 - (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
 - (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the modification of a five-storey residential flat 'housing' development plus basement car parking for the provisions of 26 self-contained dwellings. As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

- (2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):
 - (a) the advice (if any) obtained from the design review panel, and
 - (b) the design quality of the development when evaluated in accordance with the design quality principles, and
 - (c) the Apartment Design Guide.

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel.

DESIGN QUALITY PRINCIPLES

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 proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

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 proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

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 proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

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 proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

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, coordinating 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 proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

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 wellbeing.

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: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

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 is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

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 proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

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 is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	No change to the approved siting of the development is proposed.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	No change to the approved orientation of the development is proposed.
Public Domain Interface	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?	The proposed modifications provide an appropriate transition between the public and private domain while maintaining adequate safety and security. The amenity of the public domain is retained.
Communal and Public Open Space	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)	No change to the approved communal open space is proposed.

Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (%)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (%)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	No change to the approved deep soil is proposed.
Site area	Minimum dimensions	Deep soil zone (%)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <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> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	No change to the approved building separation is proposed.
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	No change to the approved pedestrian access and entry arrangements is proposed.												
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	No change to the approved vehicular access and entry arrangements is proposed.												

Bicycle and Car Parking	<p>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</p> <p>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.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	Not applicable. The site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use.
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>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. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>	50% of apartments receive compliant solar access. This is consistent with the approved development.
Natural Ventilation	<p>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. Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</p>	The two proposed additional apartments are naturally cross ventilated. As such, 65% of apartments are naturally cross ventilated.

Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <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>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>If located in mixed used areas</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></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	<p>The ceiling height of the two proposed additional apartments is 2.83m.</p>
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <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> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <p>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. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <p>3.6m for studio and 1 bedroom apartments</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>The two proposed additional apartments each contain three bedrooms and two bedrooms, and are in excess of 95sqm in area.</p> <p>The two proposed additional apartments are compliant in relation to window size and depth of habitable rooms.</p> <p>The depth of the open plan portions of the two proposed additional apartments are 7.4m and 8m.</p> <p>Each master bedroom in the proposed additional apartment has minimum area of 12sqm. Each bedroom in the proposed additional apartments is in excess of 9m. Each bedroom has a minimum dimension of 3m.</p> <p>Each living room in the proposed additional apartments has a minimum dimension of 4m.</p>		
Apartment type	Minimum internal area													
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													

	<p>4m for 2 and 3 bedroom apartments</p> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>																
Private Open Space and Balconies	All apartments are required to have primary balconies as follows:	Proposed additional apartment 104 has a depth of 2.4m and an area of 16sqm.															
	<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>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Proposed additional apartment 105 has a depth of 2.4m and an area of 13sqm.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m ²	-														
	1 bedroom apartments	8m ²	2m														
	2 bedroom apartments	10m ²	2m														
3+ bedroom apartments	12m ²	2.4m															
	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 15m ² and a minimum depth of 3m.																
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	The development includes one central circulation core. The proposed modification introduces an additional two residential units at Level 1, resulting in five units off the core at that level. The development retains six units at Level 2, eight units at Level 3 and seven units at Level 4, as approved.															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.																
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	The proposed additional units provide in excess of 10m ³ of storage space.															
	<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m³</td></tr><tr><td>1 bedroom apartments</td><td>6m³</td></tr><tr><td>2 bedroom apartments</td><td>8m³</td></tr><tr><td>3+ bedroom apartments</td><td>10m³</td></tr></table>		Dwelling Type	Storage size volume	Studio apartments	4m ³	1 bedroom apartments	6m ³	2 bedroom apartments	8m ³	3+ bedroom apartments	10m ³					
	Dwelling Type		Storage size volume														
	Studio apartments		4m ³														
	1 bedroom apartments		6m ³														
	2 bedroom apartments		8m ³														
3+ bedroom apartments	10m ³																
	At least 50% of the required storage is to be located within the apartment.																
Acoustic Privacy	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.	Noise sources are generally located away from bedrooms.															
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	The orientation of the development mitigates the impacts of external noise pollution and transmission.															

Configuration					
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.				The proposed development is compliant with this criterion in that it provides one-, two-, and three-bedroom dwellings.
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.				The façade provides visual interest with the inclusion of screening and planter boxes.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accommodation and open space.				No change is proposed to the approved roof.
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.				No change is proposed to the approved landscaping.
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:				No change is proposed to the approved planting.
	Plant type	Definition	Soil Volume	Soil Depth	
	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	
	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	
	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	
	Shrubs			500-600mm	
	Ground Cover			300-450mm	
	Turf			200mm	
Universal Design	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.				The proposed development provides seven adaptable units, equating to 27% of the total apartments.

Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Not applicable.
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	The subject site is adequately serviced by bus and ferry. Retail uses are proposed to be located on the ground floor.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	The proposed modification to the awning retains shelter over the existing footpath, over the active street frontages and building entry. The modification to the awning complements the building design and is consistent with the streetscape. No signage is proposed as part of this application.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	The proposed development is compliant with this criterion.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, storm water and groundwater?	The proposed development is compliant with this criterion.
Waste Management	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	The proposed development is compliant with this criterion.
Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	The proposed development is compliant with this criterion.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

- (1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:
 - (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
 - (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
 - (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment: The parking rate specified in Part 3J of the Apartment Design Guide (as per the Guide to Traffic Generating Developments) does not apply in this case, as the site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use. The parking rate within the MDCP 2013 has been applied and the development is consistent with the required rate. The proposed internal areas for each apartment exceed the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide. The proposed ceiling heights are equal to the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide. The application is not being refused in relation to these matters.

- (2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:
 - (a) the design quality principles, and
 - (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.
- (3) To remove doubt:
 - (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
 - (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment: The application demonstrates that adequate regard has been given to design quality principles and the objectives of the Apartment Design Guide, as it provided a Design Verification Statement, outlining the proposed works.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Manly Local Environmental Plan 2013

The subject site is located in Zone B2 Local Centre under the Manly LEP 2013. The proposal replaces commercial floor space at the first floor level with two residential units. The resultant development remains shop top housing, as retail uses at the ground floor are retained, with all residential units located above the ground floor, as defined in the MLEP 2013:

“shop top housing means one or more dwellings located above ground floor retail premises or business premises”

The proposed development is permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

Zone B2 Local Centre

Objectives of zone

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.

The proposed modifications retain retail premises at the ground floor to serve the needs of the people who live in, work in and visit the local area.

- To encourage employment opportunities in accessible locations.

The proposed modifications retain retail premises at the ground floor, thereby providing employment opportunities in an accessible location, nearby bus and ferry services.

- To maximise public transport patronage and encourage walking and cycling.

The subject site is within walking distance of bus and ferry services, and cycling paths.

Part 4 Principal development standards

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

4.	Principal Development Standards	Requirement	Approved	Proposed	Complies Yes/No	Comments
4.3	Height of buildings	15m	19.4	19.4m	No	As approved. No change proposed.
4.4	Floor Space Ratio	3:1 2,979m ²	2.97:1 2,950m ²	2.94:1 2,920m ²	Yes	-

4.6 Exceptions to development standards

No additional variations to development standards are proposed.

Part 5 Miscellaneous Provisions

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

5.	Miscellaneous Provisions	Applies	Complies	Comment
5.10	Heritage Conservation	Yes	Yes	The proposed modifications are consistent with the objectives and provisions of Clause 5.10 of the Manly LEP 2013.

Part 6 Local Provisions

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

6.	Local Provisions	Applies	Complies	Comments
6.4	Stormwater Management	Yes	Yes	The proposed modifications are consistent with the objectives and provisions of Clause 6.4 of the Manly LEP 2013.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposed modifications are consistent with the objectives and provisions of Clause 6.9 of the Manly LEP 2013.
6.11	Active street frontages	Yes	Yes	The proposed modifications retain retail at ground level. The proposed modifications are therefore consistent with the objectives and provisions of Clause 6.11 of the

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				Manly LEP 2013.
6.16	Gross floor area in Zone B2	Yes	Yes	The proposed modifications result in 19% of the gross floor area as commercial use. However, the proposed modifications are consistent with the objectives and provisions of Clause 6.16 of the Manly LEP 2013.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and
There is no applicable Draft Planning Instrument.

79C(1)(a)(iii) - any development control plan, and

Manly Development Control Plan 2013:

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

Part 3 General Principles of Development

Issues	Consistent with principle	Inconsistent with principle
Townscape	✓	
Heritage – In Vicinity	✓	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	
Sustainability	✓	
Accessibility	✓	
Stormwater Management	✓	
Waste Management	✓	
Mechanical Plant Equipment	✓	

Comment:

The Sunlight Access and Overshadowing, Maintenance of Views, Sustainability, Accessibility, Stormwater Management, Waste Management and Mechanical Plant Equipment objectives of the Manly DCP 2013 are not required to be addressed in this case, as they proposed modifications do not alter the approved development's consistency with these objectives.

3.1 Streetscapes and Townscapes

Streetscape

Objective 1) *To minimise any negative visual impact of walls, fences and carparking on the street frontage.*

The proposed modifications make no amendment to the approved walls and car parking on site. No fences are proposed.

Objective 2) *To ensure development generally viewed from the street complements the identified streetscape.*

The proposed modifications retain the approved development's consistency with the streetscape.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Not applicable. The proposed development is consistent in its context.

3.2 Heritage Considerations

Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

The proposed development does not unreasonably impact upon the heritage significance of the Town Centre Conservation Area. The subject site is not located on the foreshore, and does not contain any potential archaeological sites, places of Aboriginal significance, or places of natural significance.

Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.

The proposed modifications are of a complementary and consistent design to the approved development, and does not to unreasonably impact on the Town Centre Conservation Area or the locality.

Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.

The proposed modifications are of a form and design so as to not to detract from the significance of the Town Centre Conservation Area.

Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.

The proposed development does not involve infrastructure.

Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.

The heritage significance of the site has been considered throughout the planning process for this application. Council's Heritage Advisor has reviewed the application and has raised no objection to the proposal, as it adequately conserves the heritage value of the subject site and surrounds.

3.4.2 Privacy and Security

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

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

The proposed additional apartments are orientated to the street frontage on Belgrave Street. Adjacent balconies are screened from one another. As such, the proposed modifications are designed to mitigate direct viewing between properties.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

The proposed modifications provide adequate privacy without compromising access to light and air. The outlook and views from habitable rooms is balanced in that overlooking is minimised, but views from the subject site are still available.

Objective 3) To encourage awareness of neighbourhood security.

The proposed modifications retain the balcony and windows to the street frontages and retail uses at the ground floor, thereby encouraging awareness of neighbourhood security through passive surveillance.

Part 4 - Development Controls

Site Area:	993m ²	Permitted/ Required	Approved	Proposed	Complies Yes/No
Setbacks		0m	0m	0m	Yes
Car Parking		42 spaces	49 spaces	49 spaces	Yes
Loading bay		As per demand	1 loading bay	1 loading bay	Yes
Awnings		3.5-4.5m above ground Setback min. 600mm from kerb	3.2m above ground Setback 485mm from kerb	No change to approved height and setback proposed	Yes

Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area	✓	
Foreshore Scenic Protection Area	✓	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓
Gurney Crescent and Clavering Road, Seaforth		✓

Comment:

The proposed development is consistent with the Special Character Areas and Sites objectives and provisions in relation to the Town Centre Conservation Area and Foreshore Scenic Protection Area. The proposed development shall have minimal impact on the heritage significance and visual aesthetic amenity of the area.

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
No planning agreement has been entered into in relation to the proposed modifications to the approved development.

79C(1)(a) (iv) - the regulations

The relevant prescribed regulations contained within the *Environmental Planning and Assessment Regulations 2000* are addressed through the imposition of suitable conditions.

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan applicable for the Manly area.

79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed modifications to the approved development will not result in any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.

79C(1) (c) - the suitability of the site for the development,

The proposed modifications to the approved development are suitable for the site.

79C(1) (d) - any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Section 2.3 of Council's Development Control Plan 2013 with no submissions received.

79C(1) (e) - the public interest.

The proposed modifications to the approved development are in the public interest.

S94 Contribution towards provision or improvement of amenities or services

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) *the dedication of land free of cost, or*
 - (b) *the payment of a monetary contribution,*
- or both.*
- (2) *A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

Comments:

The proposal is compliant in relation to parking. No contribution is applicable in this regard. Contributions are applicable in relation to the commercial and residential portions of the whole development. However, the proposed development results in a reduction of the commercial contribution payable, given an overall reduction in commercial gross floor area, and an increase to the residential contribution payable, given the addition of two new dwellings (totaling 26 units).

The revised (reduced) calculations for contributions relating to the commercial portion of the development are as follows:

Commercial gross floor area	=	439m ² (accounting for 239m ² reduction)
Rate	=	\$ 28,036.34 per 100m ² of additional commercial gross floor area
	=	\$280.3634 per square metre
		\$280.3634 x 439
		= \$123,079.53

The calculations for contributions relating to the residential portion of the development are as follows:

A Section 94 contribution is to be paid for the provision of or increase the demand for public amenities and public services as a consequence of the development in the area. The total contribution for this new portion of the development with the addition of 2 new dwelling units is 2 x \$20,000 = \$40,000, being \$20,000.00 per additional dwelling. This contribution shall be paid to Council prior to the release of the Construction Certificate.

The total revised calculations for contributions relating to the whole development are as follows:

Commercial:	\$123,079.53
Residential:	\$520,000 (26 dwellings)
Total:	\$643,079.53

The relevant condition of consent (ANS27) has been amended to reflect the above revision.

Section 96 (2) of the Environmental Planning and Assessment Act 1979

(2) Other modifications

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
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

(5) Threatened species

Development consent of the kind referred to in section 79B (3), or in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995, is not to be modified unless:

- (a) in the case of development referred to in section 79B (3)—the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent, or
- (b) in the case of development in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995—the applicant has made an application for modification of the biobanking statement in relation to the proposal and a new biobanking statement has been issued or the consent authority is satisfied that the modification will have no impact on biodiversity values (within the meaning of that Act).

With regard to the above it is considered that the proposed modifications to the original consent, will result in substantially the same development for which consent was originally granted. The modifications requested were notified in accordance with Council's Manly DCP with no submissions received. All matters relating to the proposed modifications in terms of impact on have been considered. On balance, the proposed modifications are considered to be satisfactory for approval, subject to conditions.

CONCLUSION:

The application has been assessed having regard to Section 79C and Section 96 of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for approval, subject to conditions.

This report is referred to the Manager of Development Assessment for determination in accordance with the delegations granted by the General Manager.

RECOMMENDATION

That pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. 230/2015 for alterations and additions to existing building at 21 Belgrave Street, Manly be **Approved** subject to:

GENERAL CONDITIONS

The following Condition No.1 is to be amended as per Section 96(2) Application – Part 3:

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

Plans affixed with Council's stamp relating to Development Consent No. DA230/2015:

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
DA-005 -Demolition Plan	Issue 03 dated 2/2/2016	5/2/2016
DA-006- Basement 3 Proposed Plan	Issue 03 dated 2/2/2016	5/2/2016
DA-007- Basement 2 Proposed Plan	Issue 03 dated 2/2/2016	5/2/2016
DA-008- Basement 1 Proposed Plan	Issue 03 dated 2/2/2016	5/2/2016
DA-009- Ground Floor Proposed Plan	Issue 03 dated 212/2016	5/2/2016
DA-010- Level 1 Proposed Plan	Issue 03 dated 2/2/2016	5/2/2016
DA-011- Level 2 Proposed Plan	Issue 03 dated 2/2/2016	5/2/2016
DA-012- Level 3 Proposed Plan	Issue 03 dated 2/2/2016	5/2/2016
DA-013- Level 4 Proposed Plan	Issue 03 dated 2/2/2016	5/2/2016
DA-014- Roof Proposed Plan	Issue 03 dated 2/2/2016	5/2/2016
DA-015- North Elevation	Issue 03 dated 2/2/2016	5/2/2016
DA-016- East Elevation	Issue 03 dated 2/2/2016	5/2/2016
DA-017- South Elevation	Issue 03 dated 2/2/2016	5/2/2016
DA-018- West Elevation	Issue 03 dated 2/2/2016	5/2/2016
DA-019- Section North South	Issue 03 dated 2/2/2016	5/2/2016
DA-020- Section West East	Issue 03 dated 2/2/2016	5/2/2016
Sheet 01- Landscape – Level 01 Awning Plan	- undated	5/2/2016
Sheet 02- Landscape –Awning 3D Plan	- undated	5/2/2016
Sheet 03- Landscape – Level 01 Awning Details	- undated	5/2/2016
Sheet 04- Landscape Plan– Level 03 Courtyard	- undated	5/2/2016

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Sheet 05- Landscape Plan– Level 03 Courtyard	- undated	5/2/2016
Sheet 06- Landscape - Section	- undated	5/2/2016
Sheet 07- Landscape - Planting Plan	- undated	5/2/2016
Sheet 1 of 6 – Plan of Subdivision of Lot 1 in DP 592169	Issue 7 dated 6 April 2016	07/04/2016
Sheet 2 of 6 – Plan of Subdivision of Lot 1 in DP 592169	Issue 7 dated 6 April 2016	07/04/2016
Sheet 3 of 6 – Plan of Subdivision of Lot 1 in DP 592169	Issue 7 dated 6 April 2016	07/04/2016
Sheet 4 of 6 – Plan of Subdivision of Lot 1 in DP 592169	Issue 7 dated 6 April 2016	07/04/2016
Sheet 5 of 6 – Plan of Subdivision of Lot 1 in DP 592169	Issue 7 dated 6 April 2016	07/04/2016
Sheet 6 of 6 – Plan of Subdivision of Lot 1 in DP 592169	Issue 7 dated 6 April 2016	07/04/2016

Documentation affixed with Council's stamp relating to Development Consent No. DA230/2016:

- Amended Statement of Environmental Effects prepared by JBA Urban Planning Consultants Pty Ltd dated February 2016 and received by Council on 5 February 2016.
- BASIX Certificate No 665552M dated 29 September 2015 received by Council on 30 September 2015.
- Preliminary Geotechnical Investigation Report prepared by Douglas Partners dated September 2015 and received by Council on 30 September 2015.
- Arboriculture Impact Assessment prepared by Arboreport dated 11/9/2015 received by Council on 30/9/2015.
- Report for Preliminary Site Investigation for Contamination prepared by Douglas Partners dated September 2015 and received by Council on 30 September 2015.
- Waste Management Plan prepared by Elephants Foot dated 29/1/2016 and received by Council on 5/2/2016.
- Traffic Impact Assessment prepared by GTA Consultants dated 4/2/2016 and received by Council on 5/2/2016.
- Access Review prepared by Morris Goding Accessibility Consulting dated 29/9/2015 and received by Council on 30 September 2015.
- Statement of Heritage Impact prepared by GBA Heritage dated 3 February 2016 and received by Council on 5/2/2016.

Except where amended by:

Plans affixed with Council's stamp relating to Development Consent No. 230/2015 – S96 - Part 2:

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
S96-005 -Demolition Plan	Issue- 01- dated 2/9/2016	8/9/2016
S96-006- Basement 3 Proposed Plan	Issue 01 dated 2/9/2016	8/9/2016
S96-007- Basement 2 Proposed Plan	Issue 01 dated 2/9/2016	8/9/2016
S96-008- Basement 1 Proposed Plan	Issue 01 dated 2/9/2016	8/9/2016
S96-009- Ground Floor Proposed Plan	Issue 01 dated 2/9/2016	8/9/2016
S96-010- Level 1 Proposed Plan	Issue 01 dated 2/9/2016	8/9/2016
S96-011- Level 2 Proposed Plan	Issue 01 dated 2/9/2016	8/9/2016
S96-012- Level 3 Proposed Plan	Issue 01 dated 2/9/2016	8/9/2016
S96-013- Level 4 Proposed Plan	Issue 01 dated 2/9/2016	8/9/2016
S96-014- Roof Proposed Plan	Issue 01 dated 2/9/2016	8/9/2016
S96-015- North Elevation	Issue 01 dated 2/9/2016	8/9/2016

S96-016- East Elevation	Issue 01 dated 2/9/2016	8/9/2016
S96-017- South Elevation	Issue 01 dated 2/9/2016	8/9/2016
S96-018- West Elevation	Issue 01 dated 2/9/2016	8/9/2016
S96-019- Section North South	Issue 01 dated 2/9/2016	8/9/2016
S96-020- Section West East	Issue 01 dated 2/9/2016	8/9/2016
General Terms of Approval as issued by Water NSW in the letter (Ref No 10ERM2015/1038)	21/10/2016	21/10/2016
General terms of agreement from Ausgrid in letter Ref No TRIM 2013/21.	13/10/2016	17/10/2016

Documentation affixed with Council's stamp relating to Development Consent No. 230/2015 - S96 - Part 2:

- Statement of Modification prepared by JBA Urban Planning Consultants Pty Ltd dated 7 September 2016 and received by Council on 8 September 2016.
- BASIX Certificate No 665552M_02 dated 01 September 2016 received by Council on 8 September 2016.
- Operational Waste Management Plan prepared by Waste Audit and Consultancy Services dated August 2016 and received by Council on 8 September 2016.
- Section 96 Traffic Addendum prepared by GTA Consultants dated 6 September 2016 and received by Council on 8 September 2016.
- S96 Access Statement prepared by Morris Goding Accessibility Consulting dated 2/9/2016 and received by Council on 8 September 2016.

Except where amended by:

Plans affixed with Council's stamp relating to Development Consent No. 230/2015 – S96 - Part 3:

Plan No. / Title	Issue/ Revision & Date	Prepared by
S96-009 Ground Floor – Proposed Plan	15 November 2017	Chrofi
S96-010 Level 1 – Proposed Plan	15 November 2017	Chrofi
S96-011 Level 2 – Proposed Plan	15 November 2017	Chrofi
S96-012 Level 3 – Proposed Plan	15 November 2017	Chrofi
S96-013 Level 4 – Proposed Plan	15 November 2017	Chrofi
S96-016 East Elevation	15 November 2017	Chrofi
S96-017 South Elevation	15 November 2017	Chrofi
S96-018 West Elevation	15 November 2017	Chrofi
S96-020 West East Section	15 November 2017	Chrofi

Documentation affixed with Council's stamp relating to Development Consent No. 230/2015 - S96 - Part 3:

- Traffic Addendum prepared by GTA Consultants dated 8 November 2017
- BASIX Certificate No. 665552M_04 prepared by ESD Sydney dated 3 November 2017
- BASIX Assessment prepared by ESD Sydney dated 3 November 2017
- Building Code of Australia Capability Statement prepared by Group DLA dated 3 November 2017
- Accessibility Statement prepared by Morris Goding Accessibility Consulting dated 27 October 2017

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council.

The following Condition No. 33 is to be deleted as per Section 96(2) – Part 3:

33 (2WM05)
DELETED

The following Condition No. ANS08 is to be deleted as per Section 96(2) – Part 3:

ANS08
DELETED

The following Condition No. ANS27 to be amended as per Section 96(2) – Part 3:

ANS27

A contribution is to be paid for the provision, extension or augmentation of traffic and parking, environmental programs, streetscape and landscaping, community facilities and administration that will, or are likely to be, required as a consequence of development in the area.

Total contribution for this development for Alterations and additions to existing Telstra building including construction of a new shop top housing development containing retail, commercial uses to part of the building is currently \$652,051.16 the amount of the payment shall be in accordance with the Section 94 charges as at the date of the payment. The charges may vary at the time of payment in accordance with Council's Section 94 Contributions plan to effect changes in land values, construction costs and the Consumer Price Index.

This contribution shall be paid to Council prior to the release of the Construction Certificate and the amount payable shall be in accordance with Council's adopted Section 94 Contributions Plan effective July 2017/18 as follows;

The calculations for contributions relating to the commercial portion of the development are as follows:

Commercial gross floor area = 439m²
Rate = \$ 28,036.34 per 100m² of additional commercial gross floor area
= \$280.3634 per square metre
\$280.3634 x 439
= \$123,079.53

The calculations for contributions relating to the residential portion of the development are as follows:

A Section 94 contribution is to be paid for the provision of or increase the demand for public amenities and public services as a consequence of the development in the area. The total contribution for this development with the addition of 26 new dwelling units is 26 x \$20,000 = \$520,000, being \$20,000.00 per additional dwelling. This contribution shall be paid to Council prior to the release of the Construction Certificate.

The total calculations for contributions relating to the development are as follows:

Commercial: \$123,079.53
Residential: \$520,000
Total: \$643,079.53

Note: Section 94 Contribution fees are adjusted on the 1st July each year and are based on the March CPI figures.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

The following Condition No. ANS31 is to be added as per Section 96(2) Application – Part 3:

ANS31

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

The following Condition No. ANS33 is to be added as per Section 96(2) Application – Part 3:

ANS33

A residential bin store is to be provided that provides for the temporary storage of a minimum of 1560 litres of garbage, 1560 litres of paper and 1560 litres of comingled containers weekly. This equates to 9 x 240 litre bins (3 x 240 litre garbage bins, 3 x 240 litre paper bins, 3 x 240 litre comingled containers bins) to be serviced three times weekly. It is the responsibility of property management to ensure adequate ongoing storage and collection of waste and recycling from the property, in perpetuity.

Reason: To ensure Multi-Unit Dwelling developments allow sufficient space for waste bins

The following Condition No. ANS34 is to be added as per Section 96(2) Application – Part 3:

ANS34

A separate commercial bin store is required, providing for temporary storage of 2,500 litres of garbage and 2,200 litres of recycling weekly.

Reason: To ensure the appropriate separation and collection of waste generated by commercial and residential activities.

The following Condition No. ANS35 is to be added as per Section 96(2) Application – Part 3:

ANS35

Bins are not to be placed kerbside for collection and are required to be serviced from within private property. A waste collection vehicle must be able to safely enter the property to collect waste from within the waste storage room.

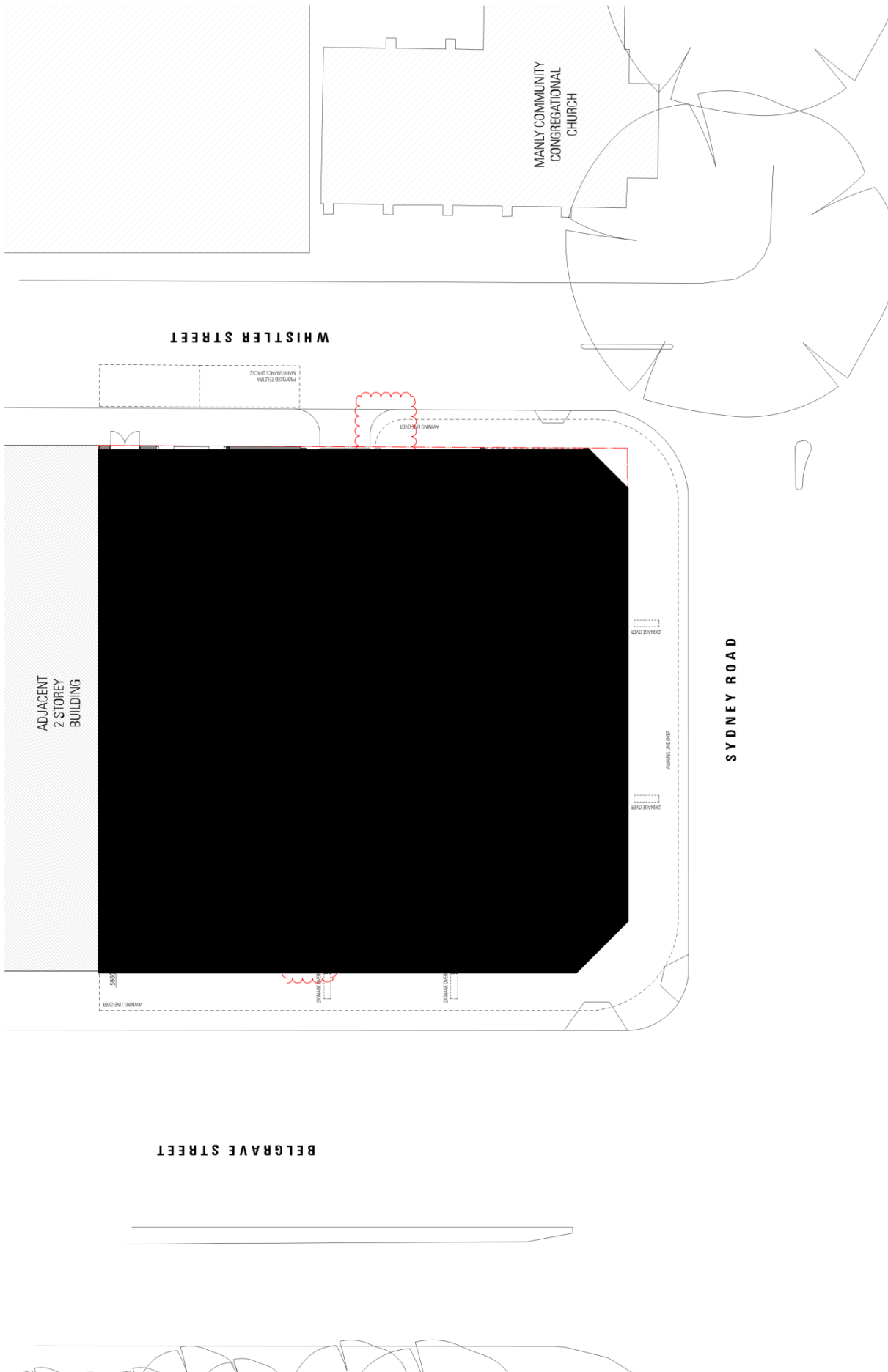
Reason: To ensure public amenity and safe movement of waste bins and vehicles during waste collections, minimising vehicle and pedestrian conflict.

The following Condition No. ANS36 is to be added as per Section 96(2) Application – Part 3:

ANS36

Council is required to levy domestic waste service charges on every residential property, regardless of whether a private contractor is engaged to provide waste services.

Reason: To ensure compliance with the Local Government Act.



S96-009 03

GROUND FLOOR - PROPOSED PLAN

1:100 @ A1

15/11/17

Telstra Exchange Residential Development - Manly
CHROFI
TWENTY95



S96-016 03

EAST ELEVATION

1:100 @ A1

15/11/17

TWENTY95

CHROFI

Telstra Exchange Residential Development - Manly





ITEM 3.5

**MOD2017/0314 - 7/7-9 MARINE PARADE MANLY -
MODIFICATION OF DEVELOPMENT CONSENT DA3754/1990
GRANTED FOR APPROVED RESTAURANT INVOLVING A 2
YEAR TRIAL PERIOD FOR TRADING HOURS**

REPORTING MANAGER Rodney Piggott
TRIM FILE REF 2018/213987
ATTACHMENTS 1 [↓](#) Assessment Report

PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant approval to Modification Application No. Mod2017/0314 for Modification of Development Consent DA3754/1990 granted for approved restaurant involving a 2 year trial period for trading hours on land at Lot 7 SP 12796,7 / 7 - 9 Marine Parade, MANLY, subject to the conditions outlined in the report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 11 April 2018

7 / 7 - 9 Marine Parade Manly - Modification of Development Consent DA3754/1990 granted for approved restaurant involving a 2 year trial period for trading hours

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2017/0314
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 7 SP 12796, 7 / 7 - 9 Marine Parade MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA3754/1990 granted for approved restaurant involving a 2 year trial period for trading hours
Zoning:	Manly LEP2013 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	Yes
Owner:	Aorta Investments Pty Ltd
Applicant:	Hartmut Schacker
Application lodged:	14/12/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	21/12/2017 to 29/01/2018
Advertised:	Not Advertised
Submissions Received:	9
Recommendation:	Approval

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 96AA - with S79C Assessment
 Manly Local Environmental Plan 2013 - 6.21 Noise impacts—licensed premises
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.2.8.6 Hours of Operation

SITE DESCRIPTION

Property Description:	Lot 7 SP 12796 , 7 / 7 - 9 Marine Parade MANLY NSW 2095
Detailed Site Description:	<p>The subject site is commonly known as 7-9 Marine Parade Manly and known as Lot SP 12796. The site is located on the southern side of Marine Parade. The site is regular in shape and has a frontage of 17.025m to Bower Street. The site has a length on Bower Lane of 30.68m and an approximate site area of 570.9m². The site currently contains a 3 storey mixed use building containing both commercial and residential uses. The site is relatively flat.</p> <p>The surrounding area includes dwelling houses, residential flat buildings, a café and shop top housing.</p>

Map:



SITE HISTORY

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

- Application Mod2017/0314 for Modification of Development Consent DA3754/1990 granted for approved restaurant involving a 2 year trial period for trading hours.

A Court Judgment/Order was issued on 23 January 2017 which included a modification to the original consent involving the addition of the following condition:

"2A. Extended Hours Trial (a) Notwithstanding condition 1 the Premises is authorised to trade during the following extended hours for a trial period of 12 months commencing on 1 February 2017 and ending on 31 January 2018 ("Trial Period"): (i) 7pm to 9.45pm on Friday and Saturday. (b) During the Trial Period the Premises must be operated in accordance with the plan of management dated 23 December 2016 a copy of which is attached to these conditions where there is any conflict between these conditions and the Plan of Management, the Plan of Management shall prevail."

PROPOSED DEVELOPMENT IN DETAIL

The proposal was originally to extend the existing trial period for an additional 2 years as well as adding additional hours for a Thursday to the trial period. However, the applicant contacted Council by email on 8 March 2018 to state that the application would be to modify the conditions so that the trial period for the additional hours on a Thursday would only be one year. The proposed trial period for the hours on Friday and Saturday is for another 2 years.

The previous trial period was for an extension of hours from 7pm to 9:45pm on a Friday and Saturday along with the original condition which requires the following:

8am to 7pm- Friday to Wednesday
8am to 9pm- Thursday



The proposal for the new trial period is to have an additional extension of hours for Thursday for 1 year. The trial period proposed is for the current Thursday 9pm to be extended to 9:45pm, for a length of 1 year. The other trial period proposed is Saturday and Friday for 7pm to 9:45pm for a length of 2 years.

The existing conditions is as follows:

2A. Extended Hours Trial

(a) Notwithstanding condition 1 the Premises the Premises is authorised to trade during the following extended hours for a trial period of 12 months commencing on 1 February 2017 and ending on 31 January 2018 ("Trial Period"):

(i) 7pm to 9.45pm on Friday and Saturday.

(b) During the Trial Periods the Premises must be operated in accordance with the plan of management dated 23 December 2016 a copy of which is attached to these conditions where there is any conflict between these conditions and the Plan of Management, the Plan of Management shall prevail.

The proposed modified condition is as follows:

2A. Extended Hours Trial

(a) Notwithstanding condition 1 the Premises is authorised to trade during the following extended hours: ("Trial Periods"):

(i) 7pm to 9.45pm on Friday and Saturday for a trial period of 2 years commencing on 11 April 2018 and ending on 11 April 2020; and

(ii) 9pm to 9.45pm on Thursday for a trial period of 1 year commencing on 11 April 2018 and ending on 11 April 2019

(b) During the Trial Periods the Premises must be operated in accordance with the plan of management dated 1 February 2018 a copy of which is attached to these conditions where there is any conflict between these conditions and the Plan of Management, the Plan of Management shall prevail.

(c) During the Trial Periods background music may be played but there shall be no live music and no amplified music.

(d) If an application is lodged with Council to extend any of the Trial Periods and such application is lodged no earlier than 4 months and no later than 3 months before the end of the relevant Trial Periods and that application is diligently prosecuted then the relevant Trial Periods shall continue until such time as the application is finally determined.

In conjunction with the proposed extension of trial period and hours, an updated Plan of Management has been submitted.

Assessing Officer comments

In terms of the proposed condition, the proposed trial periods have been considered reasonable in this report. However, an introduction of music is not considered reasonable given that the approval given by Court for trial periods included no music at all. As such the Plan of Management has been amended by the Assessing Officer to remove the allowance for music. The new Plan of Management is dated 1.02.2018 and amended on 3.04.2018 is provided in the conditions of consent.

The proposal to extend the trial period until any application regarding the trial period is determined



(given the application is received no later than 3 months before the end of the trial period), is also reasonable so that any delay in processing the development application does not have an impact on the trial period.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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;

The relevant matters for consideration under Section 96(AA) of the Environmental Planning and Assessment Act, 1979, are:

Section 96AA - 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 DA3754/1990.
(b) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2013 and Manly Development Control Plan 2013.
(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	

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Section 96AA - Other Modifications	Comments
requires the notification or advertising of applications for modification of a development consent, and	
(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 DA3754/1990.
(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 "Public Exhibition" in this report.

Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p>



Section 79C 'Matters for Consideration'	Comments
	<p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 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.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly 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 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 9 submission/s from:

Name:	Address:
Ms Catherine Mary Veech	1 Bannerman Street Cremorne NSW 2090
Ms Judith Roselyn Simone Trist	3 Bower Lane MANLY NSW 2095
Mr Kenneth Paora Elliott	1/1 Bower Lane Manly NSW 2095
Mrs Susan Stuart Elliott	1/1 Bower Lane Manly NSW 2095
Mr Alexander O'Keefe	
Mrs Doris Jean Vaughan O'Keefe	2 Bryniau Isaf Aberdyfi GWYNEDD NORTH WALES NSW
Willow Tree Planning	7/100 Walker Street NORTH SYDNEY NSW NSW 2060
Ms Maria Burnette	1 / 7 - 9 Marine Parade MANLY NSW 2095
Ms Tania Brenda Holland	23 Loch Street Freshwater NSW 2096

The following issues were raised in the submissions and each have been addressed below:

- Noise during extension of hours (including from kitchen, patrons) and the impact on residential apartments above/ noise from proposed recorded music. Acoustic impacts associated with the extended trading hours.
- Noise caused by garbage and delivery trucks. Increase in hours will make this worse. Also, the lack of appropriate access for these trucks.
- Impact of extended hours on parking
- Objection to change of closing time from 9pm to 9:45pm on a Thursday. Objection of extension to hours during "working week", Thursday is a time when "residents are typically at home"; objection to further extension of evening hours; Extending hours will have the effect of turning the cafe into a "bar like atmosphere"
- Issues including odour and rats caused by garbage bins adjacent to residents. It is stated that the bins are inadequate, request for storage to occur within the premises.
- Request for status quo for a further 2 years.
- Ongoing management of the premises and impact on residential units above. Request that Waste Management plan is regularly updated.
- Request for conditions regarding noise monitoring
- Inconsistency of acoustic report in requested hours.

The matters raised within the submissions are addressed as follows:

- Noise during extension of hours (including from kitchen, patrons) and the impact on residential apartments above/ •Noise from proposed recorded music. Acoustic impacts associated with the extended trading hours.

Comment:

An assessment under the relevant parts of the Manly DCP 2013 and Manly LEP 2013 has found

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the proposal to be reasonable in terms of noise.

- Noise caused by garbage and delivery trucks. Increase in hours will make this worse. Also, the lack of appropriate access for these trucks.
Comment:
The further extension of a trial would not cause unreasonable impact in terms of garbage and delivery, subject to the conditions.
- Impact of extended hours on parking
Comment:
The proposal including parking for the trial period for the weekend nights (Friday and Saturday) was considered reasonable by the court. The proposal to extend the trial period for this application is also reasonable in terms of parking for the weeknight, Thursday.
- Objection to change of closing time from 9pm to 9:45pm on a Thursday, Objection of extension to hours during "working week", Thursday is a time when "residents are typically at home"
Comment:
An assessment of the hours on a Thursday for a trial period has found the proposal to be reasonable. This assessment can be found under the Manly LEP 2013 and Manly DCP 2013 of this report.
- Issues including odour and rats caused by garbage bins adjacent to residents. It is stated that the bins are inadequate, request for storage to occur within the premises.
Comment:

Existing conditions remain for waste and amenity.

- Request for status quo for a further 2 years.
Comment:
A condition provides a trial period consistent with the previous trial for a further two year. Additionally, there is a trial period of one year which allows service until 9:45pm. this has been assessed as reasonable under the Manly DCP 2013 and Manly LEP 2013.
- Ongoing management of the premises and impact on residential units above. Request that Waste Management plan is regularly updated.
Comment:
The proposal has been considered reasonable in terms of impact on residential units. Conditions regarding waste management remain.
- Request for conditions regarding noise monitoring
Comment:
The acoustic report submitted and conditions recommended show and provide a reasonable control of acoustic amenity.



MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Food Premises, Skin Pen.)	<p>Environmental Health previously- Dec 2017 - commented prior to additional information becoming available :</p> <p>Environmental Health has been asked to comment on a modification which involves the extension of another two years of trading with increased hours of operation: 7pm to 9.45pm Friday and Saturday And now 9pm to 9.45pm Thursday (was 9pm close)</p> <p>And approval to provide background music previously prohibited during the trial period.</p> <p>On 23 December 2016 the Land and Environment Court granted the applicant a 12 month trial for increased operating hours as now also proposed (except for the Thursday extension and background music) .</p> <p>As stated the applicant now wishes to extend this approval for a further two years.</p> <p>Since the original approval for extended hours Dec 2016 I cannot find any evidence of complaints submitted to Council. As a condition of the court approval a plan of management was to be in place which included a "complaints book". Whether the Council needs to inspect the complaints book is a matter I only raise with Management.</p> <p>On the basis of no justifiable complaints on Council files and assuming no verified objections by residents to the proposal. Therefore</p> <ul style="list-style-type: none"> • The slight increase trading on Thursday nights reflects generally Thursday night activity in the Manly area. • The proposal for background music appears reasonable provided it not audible outside the premises. • A 2 year trial period gives Council an opportunity to modify/ cease extended operations in the longer term if nuisances arise. <p>The approvals team has no objection to additional two year trial period based generally on the original conditions set by the Land and Environment Court in 2016 --subject to conditions --</p>

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Internal Referral Body	Comments
	<p>However following further review Feb 2018 :</p> <p>In view of the information now available Environmental Health acknowledges the strong objections to the increase in noise on Thursday nights and the relative acceptance of Friday and Saturday night trading.</p> <p>With numerous residential occupiers adjacent and Thursday being "part of the working week" trading to 9.45pm is considered to be unreasonable for the following reasons:</p> <ol style="list-style-type: none"> 1. The restaurant is in a residential setting distant from the generally noisier activity in central Manly. 2. Post 9pm noise of customers leaving, talking and lingering nearby particularly after consumption of alcohol cannot be controlled by the applicant. 3. Thursday night is part of the working week where residents would reasonably expect minimal noise levels. 4. Post closure cleanup noise could be expected to continue beyond actual cessation of service and may include vibration within the building. <p>Condition: Noise</p> <ol style="list-style-type: none"> 1. The 2 year extension to trading hours shall mirror the operating conditions set in the NSW Land and Environment Court Approval on 23 December 2016 and include- 2. Hours of operation shall be 7pm to 9.45pm Friday and Saturday and 9pm Thursday 3. The approval of background music during the trial period is approved subject to noise not being audible (and vibration/bass not being detected) outside of the restaurant premises. <p>Reason: To protect and maintain the residential amenity of the area</p> <p>The assessment officer requested further clarification in regards to the Council's Environmental Health officer's position on the acoustic report provided. The further comment was provided by the Environmental health officer on 16 March 2018 as follows:</p> <p>"Confirming, that our only issues relate to Noise- that now only being Thursday night trading to 9.45pm –an additional 45 minutes to that approved by the Court and for the request for background music to be played.</p> <p>The applicant has requested for the matter to be reviewed and raised a number of relevant points.</p> <p>Environmental Health concede that although the Acoustic report is outdated - 21 September 2015 – most of the conclusions are still</p>

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Internal Referral Body	Comments
	<p>relevant although "offensive noise " is not fully covered –see comments below .</p> <p>Trading on Friday and Saturday nights is still acceptable to EH as is background music ; provided it is not audible in any residential premises.</p> <p>The only remaining issue now not addressed is potential "offensive noise" on a week night (Thursday to 9.45pm) - which in this case is noise that can occur as a result of :</p> <ul style="list-style-type: none"> • People leaving, talking, laughing, slamming of car doors –effectively uncontrolled people noise on exit - especially where alcohol has been consumed. • Kitchen activity/mechanical exhaust , clean up , garbage put out, moving tables/chairs and the like , -effectively these issues are mainly building borne noise and vibration issues <p>This noise is difficult to assess in advance but is likely to be "offensive" if audible at night and because it can be intermittent rather than, say broadband soft music.</p> <p>The main noise of concern is likely to occur at or actually following cessation of trading at 9.45 pm(as proposed)e.g. up to say 10pm</p> <p>Although the use of the premises is for Business , there are residential receivers directly above and beside the restaurant and an expectation for "Residential Amenity" in a surrounding Residential area.</p> <p>Unlike central Manly effectively and entertainment/dining venue, there is a reasonable expectation for an appropriate residential amenity to be maintained , at least during week nights where adults and children may be expected to be sleeping for work/school.</p> <p>Trading past 9pm (generally accepted Thursday night shopping hours are to 9pm) is considered unreasonable in this particular location and we support in the Court approved hours at this time."</p> <p><u>Assessing Officer Comment</u></p> <p>The subject site is located in a Neighbourhood Centre in which "Restaurants or Cafes" are a permissible use. In this instance, the location of the existing restaurant is in close proximity to dwellings (above and adjoining) and as such amenity impacts need to be carefully considered. However, given this zoning, a different type of activity and mix of land uses can be reasonably expected in this area as compared a residential zone.</p> <p>Council's Environmental Health officer stated that the remaining issue was offensive noise for Thursday up until 9:45pm, being a weeknight.</p> <p>Although a weekday, the hours between 6pm to 10pm are defined as "evening" rather than "night" under the Noise Policy for Industry (2017) by the NSW EPA. A restaurant operating in a local centre zone on a weeknight "evening" for a trial period of one year is reasonable in this situation, given there is also no issue raised for offensive noise on the other evenings. Additionally, there was only one complaint in</p>

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Internal Referral Body	Comments
	the previous trial period which did not directly relate to the extension of later hours on a Thursday. Instead this complaint related to the playing of music later than 7pm which was not in accordance with the Plan of Management. The nature and relatively low number of complaints during the previous trial period add to the reasonability of the hours for a trial period, subject to conditions such as the Plan of Management providing a reasonable control on amenity.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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)

Nil

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

Compliance Assessment

Clause	Compliance with Requirements
6.21 Noise impacts—licensed premises	Yes

Detailed Assessment

6.21 Noise impacts—licensed premises

The subject has an existing approval for the use of the land as a restaurant which involves a licensed premises.

The proposed modification is for the trial period to be extended for an two years and that the hours for the trial period are extended to allow Thursday night closing at 9:45pm rather than 9pm. There is

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residential accommodation in close vicinity of the restaurant, including above and adjoining.

Over the previous trial period there was one complaint investigated in regards to music playing after 7pm. This was in relation to the court condition 2A(b) which required operation of the premises in accordance with the Plan of Management. The Plan of Management involved not playing music after 7pm, under 5.1 (j). As a result of this complaint, Council issued a verbal warning to the owners on Thursday the 16 November 2017.

It is noted that there are further complaints that are currently being investigated from the same complainant, Maria Burnette. However, across the previous trial period there was only one complaint in relation to noise, where a verbal warning was issued. As such, across a one year trial period there is no evidence to show that the proponent did not reasonably act within the confines of the consent. This provides a situation in which it is reasonable to provide an extension of the trial period as well as extension of hours for a trial period from for Thursday evening to match the hours granted by the court for the previous trial period for Friday and Saturday. However, given complaints have been made (including complaints currently under investigation), it is reasonable to restrict the consent for extended hours on a Thursday to a trial period of one year so that the success of the trial period can be assessed for the provision of any future consent relating to hours of operation.

In accordance with the above, the trial periods for hours of operation on the use of the land as a licensed premises would reasonably restrict noise nuisance for surrounding residential development.

Manly Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.2 Privacy and Security		
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
4.2.8.6 Hours of Operation	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Under Clause 3.4.2.3 of the Manly DCP 2013, there are guidelines and requirements for acoustical privacy (noise nuisance) including the consideration of the '*Noise Guide for Local Government prepared by NSW Department of Environment, Climate Change and Water in 2010*'. The proposed use is an approved restaurant and classified as a licensed premises and as such an assessment under the following relevant parts of subclause 3.4.2.3 has been made:

The Noise Guide for Local Government prepared by NSW Department of Environment, Climate Change and Water in 2010

Comment:

Under subclause 3.1.4 of the Noise Guide for Local Government, guidelines are provided for considering noise in the DA process. In particular, this refers to the process of reviewing the noise impact assessment provided by the applicant. In this instance, an acoustic report has been provided and reviewed by Council's Environmental Health team. In this regard, Council's Environmental Health officer did not raise an objection to the report except that "offensive noise" was not fully covered. This included the "offensive noise" on the weeknight which can occur as a result of the following (as stated

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by Council's Environmental Health officer:

- *People leaving, talking, laughing, slamming of car doors –effectively uncontrolled people noise on exit - especially where alcohol has been consumed.*
- *Kitchen activity/mechanical exhaust , clean up , garbage put out, moving tables/chairs and the like , -effectively these issues are mainly building borne noise and vibration issues*

A Plan of Management has been updated to adequately assist in addressing these issues and conditions of the consent will also reasonably control this. In addition, the lack of evidence of any offensive noise (through the complaint register) during the previous trial period, for the weekend nights which were also approved until 9:45pm provide a situation in which another trial until the same time of night with conditions would be reasonable.

Noise control reports are to be provided with DA's for the management of patron noise and other offensive noise, demonstrating the following:

- i) The La10* noise level emitted from the licensed premises must not exceed the background of noise level in any Octave Band Centre Frequency (31.5Hz to 8kHz inclusive) by more than 5dB between 7am and 12 midnight at the boundary of any affected residence.
- ii) The La 10* noise level emitted from the licensed premises must not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz to 8kHz inclusive) between 12 midnight and 7am at the boundary of any affected residence.
- iii) The noise level from the licensed premises must not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am or as otherwise required under conditions of development consent.
- iv) Balconies, verandahs, any roof top areas and any external access thereto must be closed to patrons between the hours of 10pm to 8am daily to minimise noise nuisance.

Comment:

The acoustic report provided shows measurements that meet these requirements and the acoustic report supported the proposal.

4.2.8.6 Hours of Operation

Clause 4.2.8.6 of the Manly DCP 2013 for Hours of Operation provides the following provisions:

- a) *Consideration will be given to the protection of acoustical privacy and the amenity of the residential neighbourhood in the determination and approval of hours of operation including hours for service deliveries and collections.*
- b) *The appropriate hours of operation will be assessed and determined in the DA process stage with particular regard to the proximity to, and the likely impacts on residential accommodation. Also, applicants may be required to provide supporting documentation and/or mitigation measures with a DA to justify hours of operation that are considered by the Council to potentially impact on the neighbourhood.*

An assessment in regards to the above provisions follows:

A consideration of noise nuisance and the reasonableness of the related extended hours for the trial period has been made under Clause 6.21 of the Manly LEP in this report. This has found the proposal



would be reasonable in terms of acoustical privacy. Additionally, the existing conditions relating to amenity including the requirements for a Plan of Management will remain. Additionally, an acoustic report has been provided and Environmental health have stated that "most of the conclusions are still relevant". This is with the exception of addressing offensive noise for Thursday up until 9:45pm. Although a weekday, the hours between 6pm to 10pm are defined as "evening" rather than "night" under the *Noise Policy for Industry (2017)* by the NSW EPA. A restaurant operating in a local centre zone on a weeknight "evening" is therefore reasonable given there is also no issue raised for offensive noise on the other evening and subject to the conditions to protect amenity to the neighbouring dwellings.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this 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 2000;
- 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



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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2017/0314 for Modification of Development Consent DA3754/1990 granted for approved restaurant involving a 2 year trial period for trading hours on land at Lot 7 SP 12796,7 / 7 - 9 Marine Parade, MANLY, subject to the conditions printed below:

A. Modify Condition 2A. Extended Hours Trial to read as follows:

a) Notwithstanding condition 1 the Premises is authorised to trade during the following extended hours: ("Trial Periods"):

(i) 7pm to 9.45pm on Friday and Saturday for a trial period of 2 years commencing on 11 April 2018 and ending on 11 April 2020; and

(ii) 9pm to 9.45pm on Thursday for a trial period of 1 year commencing on 11 April 2018 and ending on 11 April 2019

(b) If an application is lodged with Council to extend any of the Trial Periods and such application is lodged no earlier than 4 months and no later than 3 months before the end of the relevant Trial Periods and that application is diligently prosecuted then the relevant Trial Periods shall continue until such time as the application is finally determined.

(c) During the Trial Periods the Premises must be operated in accordance with a Plan of Management dated 1.02.2018 and amended by Council on 3.04.2018, where there is any conflict between these conditions and the Plan of Management, the Plan of Management shall prevail.

2. Seating to be restricted to 58 seats internally and 32 seats and 8 tables externally (licensed area only), with no further increase permitted due to inability to provide off-street parking.