

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held in the Walamai Room, Civic Centre, Dee Why

WEDNESDAY 22 AUGUST 2018



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 22 August 2018
in the Walamai Room, Civic Centre, Dee Why**

1.0	APOLOGIES & DECLARATIONS OF PECUNIARY INTEREST/CONFLICT OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 8 August 2018.....	4
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS	5
3.1	DA2018/0344 - 206 Whale Beach Road, Whale Beach - Demolition of existing dwelling house and studio and construction of a new dwelling house including swimming pool and garage	5
3.2	DA2018/0508 - 5 Joanne Place, Bilgola Plateau - Construction of two storey deck.....	44
3.3	DA2018/0816 - 5 Edgecliffe Esplanade, Seaforth - Alterations and additions to the existing dwelling house	72
3.4	DA2018/0747 - 27 Alma Street, Clontarf - Alterations and additions to an existing dwelling house	100
3.5	DA2018/0046 - 36 Malvern Avenue, Manly - Alterations and additions to the existing building	136

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 8 AUGUST 2018

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 8 August 2018 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1

**DA2018/0344 - 206 WHALE BEACH ROAD, WHALE BEACH -
DEMOLITION OF EXISTING DWELLING HOUSE AND STUDIO
AND CONSTRUCTION OF A NEW DWELLING HOUSE
INCLUDING SWIMMING POOL AND GARAGE**

REPORTING MANAGER Matthew Edmonds

TRIM FILE REF 2018/516639

ATTACHMENTS
1 [↓](#) Assessment Report
2 [↓](#) Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/0344 for Demolition of existing dwelling house and studio and construction of a new dwelling house including swimming pool and garage on land at Lot 58 DP 11067, 206 Whale Beach Road, Whale Beach, subject to the conditions outlined in the Assessment Report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 22 August 2018

206 Whale Beach Road Whale Beach - Demolition of existing dwelling house and studio and construction of a new dwelling house including swimming pool and garage

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0344
Responsible Officer:	Kevin Short
Land to be developed (Address):	Lot 58 DP 11067, 206 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Demolition of existing dwelling house and studio and construction of a new dwelling house including swimming pool and garage
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	Mark John Arnold Jeremy Wade Cleaver
Applicant:	Daniel Raymond Architect Pty Ltd
Application lodged:	06/03/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	13/03/2018 to 27/03/2018
Advertised:	Not Advertised
Submissions Received:	4
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,913,000.00

ASSESSMENT INTRODUCTION

DA2018/0344

Page 1 of 37



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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - C1.3 View Sharing
 Pittwater 21 Development Control Plan - D12.1 Character as viewed from a public place
 Pittwater 21 Development Control Plan - D12.5 Front building line
 Pittwater 21 Development Control Plan - D12.6 Side and rear building line
 Pittwater 21 Development Control Plan - D12.8 Building envelope
 Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land
 Pittwater 21 Development Control Plan - D12.11 Fences - General

SITE DESCRIPTION

Property Description:	Lot 58 DP 11067 , 206 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	<p>The subject site is generally rectangular in site, has an area of 941.6m² and is located on the high side of the road within moderate sloping topography and with an easterly aspect. A single storey dwelling house and detached outbuilding occupy the mid and rear portions of the site, respectively. Vehicular access to the site is provided from Whale Beach Road.</p> <p>The existing driveway has been cut into the site and the front of the site is supported by several terraced retaining walls up to a height of 1.5m. Excavation works have previously occurred to form a building platform for the existing dwelling. Landscaping on site comprises grass lawn areas and small to medium size canopy trees within the front setback area and several medium to large size palm trees located within the rear setback area of the site with under storey shrubs.</p>



The subject site is zoned E4 Environmental Living and affected by landslip. Adjoining and surrounding development is characterised by a mixture of modern and traditional style two and three storey dwelling houses in landscaped settings.

Map:



SITE HISTORY

Development Consent No. 0275/97 for a garden studio and additions to the dwelling was granted 16 June 1997.

PROPOSED DEVELOPMENT IN DETAIL

Development consent is sought for the demolition of the existing dwelling house and construction of a three (3) storey dwelling house and garage comprising the following;

Lower ground floor

- Excavation works up to 5.3m in depth within the front setback area to provide for a double garage, wine cellar, gym, foyer and sub floor area, vehicle cross-over, driveway and internal access stairs to a lift to provide access to ground floor level
- Sandstone retaining walls with landscaping

Ground floor plan

- Living rooms, kitchen, lounge, bedroom, outdoor terrace and court yard
- Construction of a swimming pool above the garage with associated landscaping

First floor plan

- Two (2) bedrooms, balcony, void, ensuite, internal staircase, courtyard and landscaping works

DA2018/0344

Page 3 of 37



Second floor level

- Study and ensuite

Other Details

- Gable metal roof form with sky lights
- Extensive landscaping works, including the planting of trees, shrubs and grass lawn areas
- Removal of several small trees and shrubs
- External materials and finishes comprising sandstone retaining walls and paving, timber framed glass doors and windows, glass balustrades, weatherboard and sandstone clad external walls
- Stormwater management system, including on-site detention and disposal to the street

Amended Plans

Amended plans were received in response to concerns raised in a letter from Council dated 16 May 2018 in relation to the proposed works within the front setback area (lower ground floor), including the lack of landscaping due to the excessive floor area of the double garage, gym, foyer and sub floor area, prominence of the swimming pool within the front setback area and lack of articulation and excessive height of the proposed retaining walls.

The amended plans substantially reduced the area of the lower ground floor by deleting the gym, foyer and sub floor area. The design of the retaining walls has been changed, including a reduction in the size and extent of the retaining walls, stepping and terracing of retaining walls to provide greater landscaped areas and to provide an increase in the front setback to the swimming pool by 2.0m.

In accordance with the notification requirements of P21DCP, the amended plans were not required to be re-notified.

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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been

DA2018/0344

Page 4 of 37



Section 4.15 Matters for Consideration'	Comments
	<p>addressed via a condition of 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> <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>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 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> <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>
<p>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>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</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</p>



Section 4.15 Matters for Consideration'	Comments
	The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

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:
Michael Barrington Reede	59 Mandalong Road MOSMAN NSW 2088
Mr Andrew Charles Dowe	PO Box 194 CAMMERAY NSW 2062
Mr John Leslie Nicholson	13 Morella Road WHALE BEACH NSW 2107
Mrs Barbara Lyle Dowe	PO Box 194 CAMMERAY NSW 2062

A total of five (5) submissions were received in relation to the proposal, including two (2) submissions from the same property owners. Verbal concern in relation to view loss was also raised by a representative of No. 15 Morella Road. All sites were inspected to consider the concerns raised in the submissions.

The following issues were raised in the submissions and each have been addressed below:

- View loss
- Is the existing detached outbuilding being demolished?
- Roof glare
- Tree protection

The matters raised within the submissions are addressed as follows:

- View loss
Comment:

DA2018/0344

Page 6 of 37



The concern is that the proposed development, particularly the third storey element (Study) located at the rear of the property, will cause unreasonable view loss to adjoining and surrounding properties located on the high western side of the subject site, including Nos. 13 to 19 Morella Road. Further,

As detailed under the P21DCP cl. C1.3 View Sharing section of this report, view sharing between properties was found to be reasonable and acceptable and did not warrant the deletion of the Study.

Height poles, with the location and height of each erected pole being certified by a registered surveyor, were erected by the Applicant to represent sections of the proposed dwelling and to assist in the view sharing assessment. Further requirements for flags and or photo montages are not warranted for this proposal.

Therefore, the concerns raised in relation to view loss are not concurred with and do not warrant the redesign or refusal of the application.

- Is the existing detached outbuilding being demolished?

Comment:

The submission questions whether the existing detached outbuilding located within the rear setback area of the subject site will be demolished as part of the application.

The proposal seeks to demolish all structures on site, including the existing dwelling house and outbuilding. A recommended condition is included requiring landscaping works to be completed prior to issue of any occupation certificate. In this regard, the outbuilding will be required to be demolished prior to the issue of any occupation certificate.

- Roof glare

Comment: The concern is that the roof may exhibit excessive glare.

The external finishes board submitted with the application details that "Windspray" will be the colour tone of the roof. A condition is included in the Recommendation for the external finish to the roof to have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties.

- Tree protection

Comment: The concern is that tree protection conditions should be imposed on the consent to protect the palm trees located at the rear of the site from construction processes.

The palm trees are to be retained as part of the development and suitable conditions are recommended for tree protection measures to be implemented prior, during and after construction.

MEDIATION

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

REFERRALS



Internal Referral Body	Comments
Landscape Officer	The landscape component of the proposal is acceptable subject to recommended conditions requiring completion of landscaping and protection of existing trees and vegetation.
NECC (Bushland and Biodiversity)	No objection to the development proposal subject to recommended conditions.
NECC (Development Engineering)	The proposed development does not require OSD and the submitted drainage plan is satisfactory subject to conditions. The proposed driveway grade has been assessed and is satisfactory. The submitted Geotechnical report addresses the relevant DCP controls. No objection to approval, subject to conditions as recommended.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.

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 unlikely that the site poses a contamination risk 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. 900863S dated 2 March 2018). 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.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

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

Comment:

The subject site is assessed as satisfying the criteria detailed above and will therefore have an acceptable impact on the coastal environmental area.



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

Comment:

The impacts of the proposal are deemed to have an acceptable impact on the coastal environmental area.

14 Development on land within the coastal use area

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

Comment:

The subject site is assessed as satisfying the criteria detailed above and will therefore have an acceptable impact on the coastal use area.

As such, it is considered that the application does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Pittwater Local Environmental Plan 2014

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



Principal Development Standards

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

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	lower floor: 1.6m dwelling 15m pool: 3.6m	75.4% (4.9m) N/A 44.6% (2.9m)	No Yes No
Rear building line	6.5m	14m	N/A	Yes
Side building line	2.5m (north)	dwelling: 2.5m, 3.2m, & 10.6m lift shaft & outdoor terrace: 1.6m lower floor: 1.6m pool: 1.6m	N/A 36% (0.9m) 36% (0.9m) 36% (0.9m)	Yes No No No
	1m (south)	dwelling: 1.0m & 2.1m pool: 6.3m	N/A N/A	Yes Yes
Building envelope	3.5m (north)	outside envelope	up to 37% (1.3m)	No
	3.5m (south)	within envelope	N/A	Yes
Landscaped area	60% (565m ²)	50.8% (478m ²) Variation: 56.5m ² (6% variation) + 8m ² (garden steps) = 64.5m ² Total = 57.6% (542.5m ²)	4% (22.5m ²)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	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	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	No	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.11 Fences - General	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft	Yes	Yes

DA2018/0344

Page 12 of 37



Clause	Compliance with Requirements	Consistency Aims/Objectives
areas		
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

Three (3) written submissions were received in relation to view loss from the property owners of Nos. 13, 17 & 19 Morella Road. Verbal concern was also raised from a representative of the owner of No. 15 Morella Road with respect to view loss.

Site inspections were carried out at these properties with the owners to assess the view loss impact as a result of the development. These properties are deemed the worst affected sites in terms of view loss. The development is sited as such that it will not affect the views of the adjoining properties to the north and south, being Nos. 204 & 208 Whale Beach Road.

Height poles, certified by a registered surveyor, were erected by the Applicant to represent sections of the proposed dwelling and to assist in the view sharing assessment process.

Following the view sharing assessment, view sharing is achieved as the development is assessed as having an acceptable impact on the available views of these properties. In reaching this conclusion, the four steps used in the views principle outlined within the Land and Environment Court Case Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, were used. The four steps of assessment are provided as follows:

Step one: The nature of views to be affected

The first step is to assess the nature of the views to be affected, water views are valued more highly than land views, iconic views (such as of the Opera House, the Sydney Harbour Bridge or North Head) are valued more highly than views without those icons, and whole views are valued more highly than partial views. For example, a water view in which the interface between the water and the land is visible is more valuable than one in which it is obscured.

Comment: Highly valued panoramic views are available to the north and south of the Whale Beach and Headland water/wave/land interface views, surrounding ocean waters and the escarpments of surrounding headlands. Elements of the beach and foreshore views are partially obscured by trees, vegetation and dwellings/structures located down slope on Whale Beach Road and The Strand.

Views to be affected are the partially obscured views of the beach and foreshore area.

Photo 1 & 2 below shows available views from Nos. 13 & 19 Morella Road, respectively. Photo 1 shows the erected height poles on the subject site below and the affected view from No. 13 Morella Road.

Photo 1 & 2



Photo 3 below shows the erected height poles on the subject site below and the affected view from No.
DA2018/0344

Page 14 of 37



15 Morella Road. The northern portion of the subject site is severely obscured by vegetation.

Photo 3



Photo 4 below shows the erected height poles on the subject site below and the affected view from No. 19 Morella Road. The erected height poles on the southern portion of the subject site below are obscured by vegetation.

Photo 5 below shows affected view from No. 17 Morella Road. The erected height poles on the subject site below are severely obscured by vegetation.

Photo 4 & 5



Step 2: Where the views are obtained

DA2018/0344

Page 16 of 37



The second step is to consider from what part of the property affected views are obtained. In this regard it is more difficult to protect views obtained across side boundaries than the protection of views from front and rear boundaries. Also, whether the view is obtained from a standing or sitting position may also be relevant. Sitting views being more difficult to protect. The Senior Commissioner noted that the expectation to retain side or sitting views is often unrealistic.

Comment: Affected views are obtained over and above downslope properties in a standing and sitting position and described below;

- No. 13 Morella Road - the views are obtained over the northern side boundary and over the southern side boundary of the subject site;
- No. 15 Morella Road - the views are obtained over the northern side and eastern rear boundaries and over the southern side boundary of the subject site; and
- No. 17 & 19 Morella Road - the views are obtained over the eastern rear boundaries and over the rear western boundary of the subject site.

Step 3: The extent of the impact

The third step is to assess the extent of the impact. This needs to be done for the whole of the property, and not just to that part of it from where the views are affected. The views from living areas (including kitchen areas) are more significant than from bedrooms or service areas. Whilst the impact could be assessed quantitatively, it is more useful to look at the issue in a qualitative sense and ask whether the view loss is negligible, minor, moderate, severe or devastating.

The extent of the view loss impact to Nos. 13, 15, 17 & 19 Morella Road is assessed as negligible to minor as it is limited to the partial and obscure views of the beach and foreshore area which are contained within the overall panoramic view of Whale Beach and Headland water/wave/land interface views, surrounding ocean waters and the escarpments of surrounding headlands. The extent of the affected views for each individual property is described in further detail below.

No. 13 Morella Road - the view is affected from the eastern portions of internal and external upper floor level living areas as well as an internal access way located on the floor level above. The impact is assessed as negligible (access way) to minor (living areas).

No. 15 Morella Road - the view is affected from the far south-eastern portions of internal and external upper floor level living areas as well as from a bedroom window located on the floor level above. The impact is assessed as negligible (bedroom) to minor (living areas).

No. 17 Morella Road - the view is affected from the eastern portions of internal and external upper floor level living areas. The impact is assessed as negligible as the view is severely obscured by existing vegetation.

No. 19 Morella Road - the view is affected from the eastern portions of internal and external upper floor level living areas. The impact is assessed as negligible as the view is obscured by existing vegetation and a downslope dwelling house.

Step 4: The reasonableness of the proposal

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all relevant planning controls would be considered more reasonable than one that breaches them. Importantly, the Senior Commissioner said that "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". Where a development complies with the planning controls, the question is whether a more skilfully designed proposal could provide the same development potential



whilst reducing the impact to neighbours. In that situation the view impact of a complying development would probably be considered acceptable, and the view sharing reasonable.

Comment: The development complies with the requirements of the maximum height limit, rear building line and southern side building line and envelope controls. The areas of non-compliance relate to the northern side building line and envelope control and landscaped area. The non-compliances were supported on merit for reasons including the pavillion style of the dwelling house which has minimised the height, bulk and scale of the built form and limited the extent of the building footprint over the site.

Compliance with the northern side building line and envelope control would not provide any tangible improvements in available views to Nos. 13 & 15 Morella Road, particularly as the extent of the non-compliance is relatively minor, that these views are taken over side boundaries and are highly vulnerable.

Given the location of the subject site, being on the downslope of a hill, the pavillion style of the dwelling is considered a skilful design in terms of maintaining view sharing to adjoining upslope properties, including Nos. 17 & 19 Morella Road. Locating the third storey level Study within the southern portion of the site will allow views available over the northern portion of the site which contains the single storey element of the dwelling. Also, the rear elevation of the Study has a height and width of 7.2m and 5.6m, respectively, with a gable roof form. As such, the height, bulk and scale of the study has not been maximised against relevant planning controls. Therefore, views over the Study and on each side of the gable roof form will remain available.

Having regard to the above, the impact of the proposal on available views and the development potential of adjoining and surrounding properties is deemed reasonable and acceptable. View sharing is achieved and amendments to the proposed dwelling are not warranted, including changes to the roof form, from gable to a flat roof, or reducing floor to ceiling heights or deleting the Study.

D12.1 Character as viewed from a public place

The proposal complies with the requirements of this control with exception that the garage is located within the front building line. The location of the garage within the front building line is supported given the moderate sloping topography within the front setback area; that the streetscape is characterised by excavated and retained parking and garage structures with associated retaining walls and staircases within the front building line; and that satisfactory landscaping is to be provided within the front yard which will assist to visually screen the built form when viewed from the street.

D12.5 Front building line

The front building lines to the lower floor level garage and pool coping are 1.6m to 3.6m, respectively, which do not comply with the minimum 6.5m requirement of the control. With regard to the consideration of a variation, the development is assessed as being consistent with the underlying Outcomes of the control as follows:

- The streetscape is characterised by excavated and retained parking and garage structures with associated retaining walls and staircases within the front building line. There are also some examples of swimming pools also being located within the front setback area within close proximity to the subject site, including No. 192 Whale Beach Road & No. 28 The Strand. Therefore, proposed landscaping in conjunction with the excavated nature of the garage and stepped retaining walls is consistent with the bulk and scale of surrounding development and will maintain an acceptable impact on the streetscape;
- The development has been found to be consistent with the desired future character of the



locality;

- The dwelling house has a 15m front building line and the areas of non-compliance do not generate adverse amenity impacts on adjoining and surrounding properties and maintains the preservation of views and vistas to and/or from public/private places;
- Satisfactory landscaping is to be provided within the front setback area which will assist to visually screen the built form when viewed from the street, particularly as the swimming pool is at finished ground levels and retaining walls are gradually stepped back from the street to the dwelling; and
- Whilst vehicle maneuvering in a forward direction is not facilitated, safe and convenient vehicle access will be provided to and from the site in accordance with Australian Standards.

D12.6 Side and rear building line

The control requires a minimum 2.5m and 1.0m side building line to the northern and southern boundaries, respectively. The proposal complies with these requirements with exception of the following building elements;

North elevation (minimum 2.5m requirement)

- 1.6m - ground level lift shaft & outdoor terrace;
- 1.6m - lower level; and
- 1.6m - pool.

Having regard to the above, the non-compliance is supported for the following reasons;

- The ground level lift shaft is one storey in height and the other areas of non-compliance are located at, near and below natural ground level and do not generate unreasonable or unacceptable adverse amenity impacts on adjoining and surrounding properties, including visual outlook impacts, sense of enclosure and privacy;
- An appropriate landscaping setting is provided on-site with a total of 57.6% landscaped area provided on-site;
- The side building lines are not inconsistent with that of adjoining and surrounding development; and
- The dwelling is a contemporary pavillion style dwelling house with recessive building elements which effectively minimise the bulk and scale of the built form, including appropriately considered façade fenestration, open deck areas and high quality external materials and finishes.

D12.8 Building envelope

Sections of the southern elevation are located outside the projected building envelope. Specifically, the areas of non-compliance are as follows;

- Second floor studio - maximum height of 0.8m at the eastern end of the studio and extends for a distance of 3.7m where the non-compliance ends;
- First floor master bedroom - maximum height of 0.9m at the eastern end of the bedroom and extends for a distance of 4.6m where the non-compliance ends; and
- Ground floor guest bedroom and ensuite - maximum height of 1.3m and is located within the

DA2018/0344

Page 19 of 37



upper portions of the external weatherboard walls of the gable roof form.

•

The non-compliance is supported for the following reasons:

- The extent of the non-compliance is reasonable given the existing areas of localised slope and the pavilion style of the dwelling house which has minimised the extent of the building footprint over the site, as evident by the northern side of the dwelling being fully located within the building envelope;
- The area of non-compliance does not result in any unreasonable impacts upon adjoining properties, including overshadowing, privacy, view loss and visual outlook impact;
- The dwelling complies with the maximum building height requirement and does not exhibit excessive bulk and scale; and
- The dwelling is not visually dominant by virtue of its height and bulk.

D12.10 Landscaped Area - Environmentally Sensitive Land

The amount of landscaped area provided on-site is calculated at 57.6% (542.5m²) which includes a variation comprising outdoor recreational areas and the garden steps. This amount of landscaped area does not comply with the minimum 60% requirement of the control.

Notwithstanding, the non-compliance is supported for the following reasons:

- The extent of the non-compliance is minor, being 4% (22.5m²);
- Landscaped area calculations have excluded 29m² of landscaped area located above the lower floor level basement, which if included in landscaped area calculations, would provide a complying amount of landscaped area (i.e. > 60%);
- Conditions are recommended for at least 2 canopy trees to be planted in the front setback area;
- The proposal would provide an appropriate landscape setting consistent with that of adjoining and surrounding development, including the level of on-site disturbance and excavation;
- The bulk and scale of the development has been maintained in a manner that is consistent with adjoining and surrounding development; and
- Appropriate local amenity is maintained.

D12.11 Fences - General

Submitted architectural plans detail that a 1.8m high boundary fence is to be constructed. However, the plans show insufficient details of the fence. In this regard, a condition is recommended to delete the fence as part of the development consent should the application be approved.

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

Pittwater Section 94 Development Contributions Plan

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, 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 Development Consent to DA2018/0344 for Demolition of existing dwelling house and studio and construction of a new dwelling house including swimming pool and garage on land at Lot 58 DP 11067, 206 Whale Beach Road, WHALE BEACH, 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
DA2018/0344

Page 21 of 37



Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Rev A drawings DA_001, DA_100, DA_101, DA_102, DA_103, DA_300, DA_301, DA_302, DA_400, DA_401, DA_402 & DA_800	31.05.18	Daniel Raymond Architect
External Finishes Board	undated	Daniel Raymond Architect
DA_502	12.02.2018	Daniel Raymond Architect

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation	23 February 2018	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:

Landscape Plans		
Drawing No.	Dated	Prepared By
Rev A drawing DA_500	31.05.18	Daniel Raymond Architect

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:

- o No approval is granted for fencing by this development consent.

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. Prescribed conditions (Demolition):

(a) 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 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
- (ii) 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.

(b) 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.

(c) 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.

Reason: Legislative Requirement (DACPLB09)

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.

DA2018/0344

Page 23 of 37



- (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 (Demolition):**

- (a) Unless authorised by Council:
Demolition and excavation works are restricted to:
- o 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. 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) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(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.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

6. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) 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

7. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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.

8. Construction, Excavation and Associated Works Bond (Drainage)

A Bond of \$1,000 as security against any damage to Council's Stormwater drainage infrastructure as part of this consent.

Reason: Protection of Council's Infrastructure

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

9. Stormwater Disposal

DA2018/0344

Page 27 of 37



Drainage plans are to be submitted for approval and be certified by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. All stormwater from the site shall be conveyed to the existing Council stormwater pit adjacent to the site. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

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

10. Vehicle Driveway Gradients

Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in Council's Minor Works Policy. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure suitable vehicular access to private property

11. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
 - (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.
- Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

12. Sub-Soil Seepage

All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line being the Council stormwater pit adjoining the site and is to be carried out in accordance with relevant Australian Standards. (Note: At the time of determination the following (but not limited to) Standards applied:

- o Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- o Australian/New Zealand Standard AS/NZS 3500.3 - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage.)

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

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

13. Shoring of Adjoining Property

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings. Council approval is required if temporary ground anchors are to be used



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

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

14. **Construction Traffic Management Plan (CTMP)**

Submission to Council's satisfaction of a Construction Traffic Management Plan (CTMP) prepared by a suitably qualified traffic consultant, prior to the issue of the Construction Certificate.

The plan is to address and detail arrangements regarding:

- Detail concerning delivery and removal of all materials;
- Proposed traffic routes, noting that 3 tonne load limits apply to some roads within the Northern Beaches Council Local Government Area;
- Location and extent of on/off site parking for construction workers during the construction period;
- The details of any proposed on street parking changes/ future work zone applications (subject to additional approvals); and
- Proposed hours of operation.

The CTMP must be approved in writing by Council prior to the issue of any Construction Certificate.

Reason: Traffic and pedestrian safety

15. **Vehicle Crossings Application**

An application for Driveway levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid. Approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To facilitate suitable vehicular access to private property

16. **Geotechnical Report Recommendations have been correctly incorporated into designs and structural plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 23 February 2018 are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is managed appropriately.

17. **Engineering Details**

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.



Reason: To ensure excavation and landfill are completed to an appropriate standard and conducted in a safe manner.

18. Compliance with standards (Demolition):

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 Council prior to the commencement of demolition works.

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

19. 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)

20. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

21. 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 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

23. Tree protection

DA2018/0344

Page 30 of 37



A) Existing trees and vegetation shall be retained as follows:
 i) all trees and vegetation within the site, nominated on the Landscape Concept Plan prepared by Daniel Raymond Architect, shall be protected during all construction stages, excluding exempt trees under the relevant planning instruments or legislation,
 ii) all other trees and vegetation located on adjoining properties,
 iii) all road reserve trees and vegetation.

B) 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) any tree roots exposed during excavation with a diameter greater than 50mm within the TPZ must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
 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 authorized by the Project Arborist on site,
 v) all structures are to bridge tree roots greater than 50mm diameter unless directed by a AQF Level 5 Arborist on site,
 vi) should either or both iv) and v) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures provided. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority.

Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites, and protect the existing amenity that trees and/or bushland vegetation provide.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

24. Traffic Control During Road Works

A copy of the CTMP approved under this consent is to be retained on site for the duration of the demolition/construction works.

Reason: Public Safety

25. Vehicle Crossings

The provision of a vehicle crossing 4 metres wide at the kerb to 5 metres wide at the boundary in accordance with Northern Beaches Council Drawing No A4-3330/4 EH and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property

26. 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.
DA2018/0344

Page 31 of 37



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

27. **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

28. **Post-Construction Dilapidation Report**

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

Reason: To ensure security against possible damage to Council and private property.

29. **Geotechnical Certification Prior to Occupation Certificate**

Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy is to be completed and submitted to the Principal Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

30. **House / Building Number**

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

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

Reason: Proper identification of buildings. (DACPLF04)

31. **Swimming Pool Requirements**

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

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

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 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

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



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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

32. **Landscape completion**

Landscaping is to be implemented in accordance with the approved landscape plan, inclusive of the following amendment:

i) At least 2 canopy trees in the front setback are to be provided on site to soften the built form. Each tree shall be planted at minimum 75 litre pot size and shall be capable of attaining 10 metres at maturity,

ii) all other trees as nominated on the Landscape Concept Plan shall be planted at minimum 45 litre pot size and shall be capable of attaining 6 metres at maturity,

iii) All canopy trees, and a majority (more than 50%) of other vegetation, shall be locally native species,

iv) the planting to the planter box in front of the pool shall consist of shrub planting planted at minimum 300mm pot size and shall be capable of attaining 2 metres at maturity,

v) Prior to the issue of any Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.

Reason: To ensure the built form is softened and complemented by landscaping, reflecting the scale and form of development.

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

33. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

34. **Landscape maintenance**

DA2018/0344

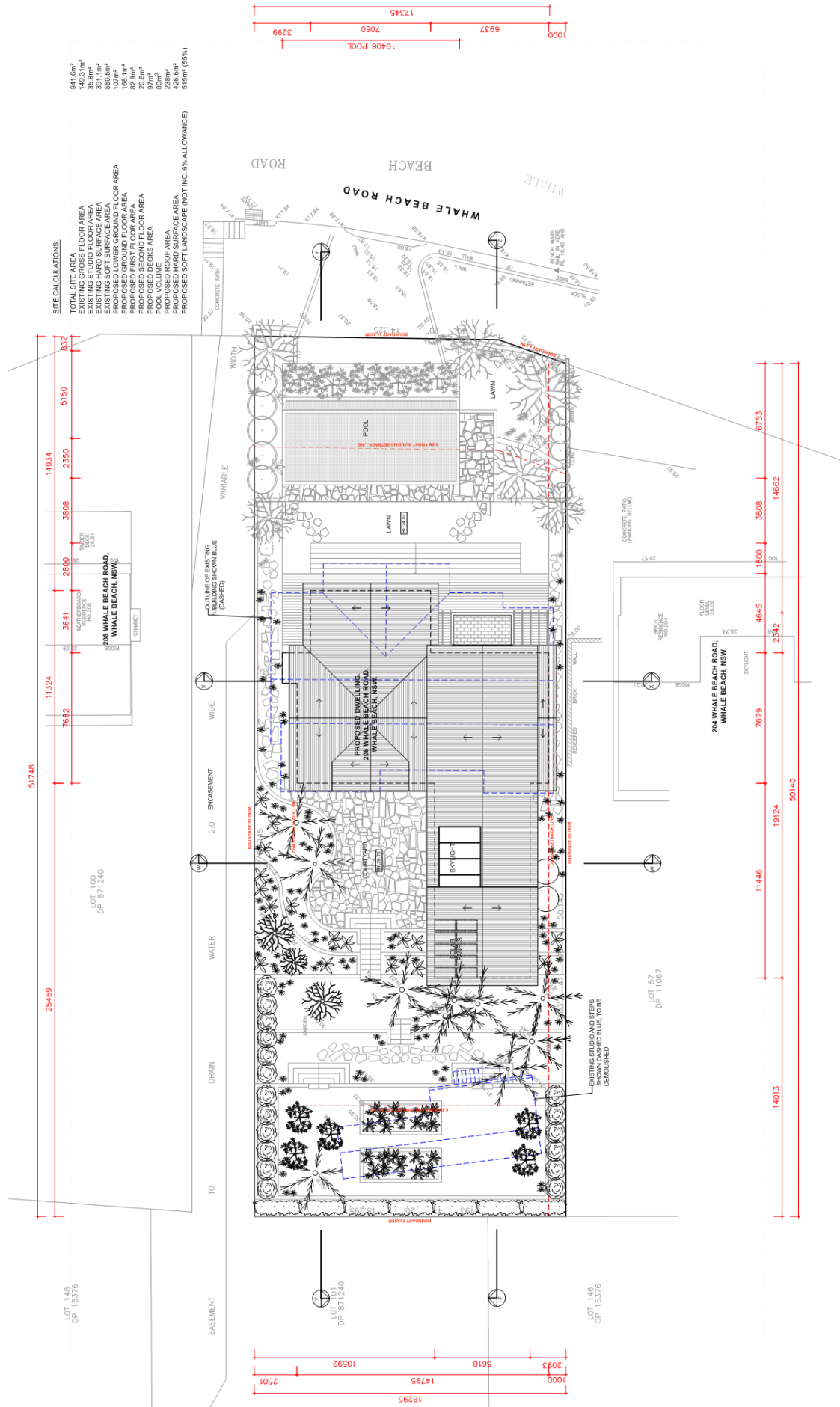
Page 33 of 37



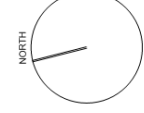
Any existing landscaping required to be retained together with any additional landscaping required by this Consent is to be maintained for the life of the development.

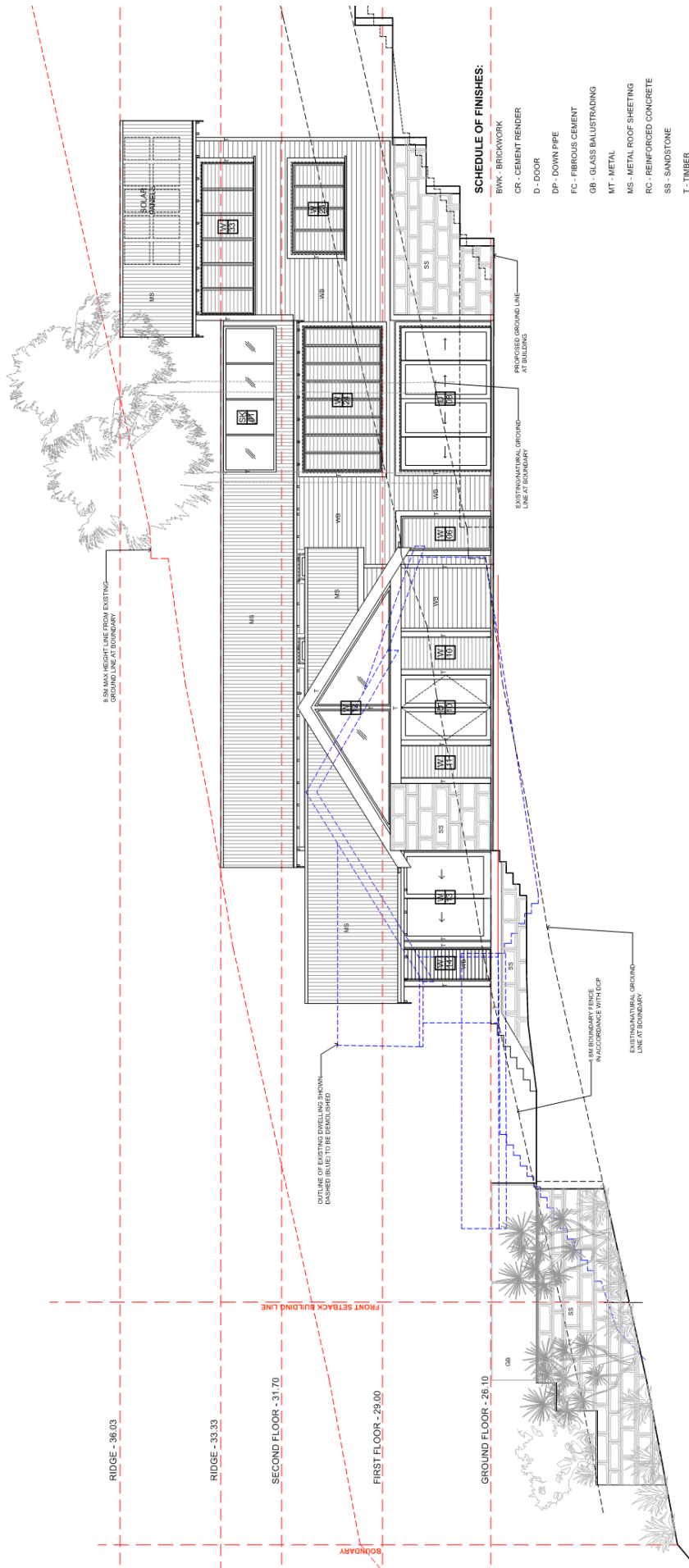
Landscape works shall be maintained for a minimum period of 12 months following practical completion. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Concept Plan.

Reason: To maintain local environmental amenity and ensure landscaping continues to soften the built form.





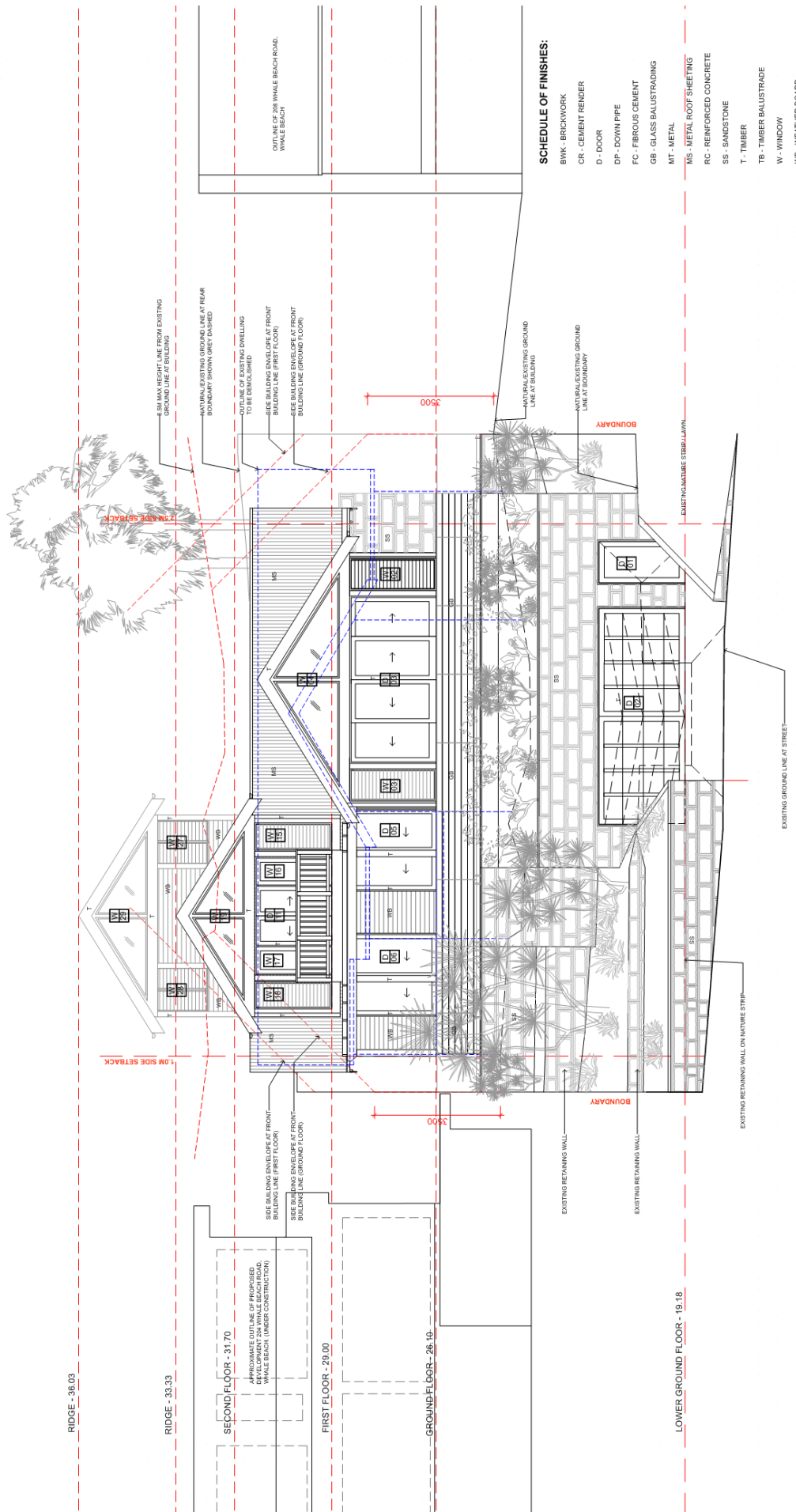
SITE PLAN 1:100 @ A1 OR 1:200 @ A3

	<p>LEGEND:</p> <p>7.03 DENOTES EXISTING SPOT LEVEL</p> <p>RL 7.10 DENOTES PROPOSED LEVEL</p> <p>NOTE: ALL DIMENSIONS ARE FOR CONSTRUCTION. FOR DA APPROVAL ONLY. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE B.C. PLANNING AND CONSTRUCTION STANDARDS. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE B.C. PLANNING AND CONSTRUCTION STANDARDS.</p>	<p>KEY:</p> <p>• DENOTES OUTLINE OF EXISTING TREES TO BE REMOVED</p> <p>--- DENOTES OUTLINE OF EXISTING BUILDING TO BE DEMOLISHED</p> <p>--- DENOTES OUTLINE OF EXISTING SHADOW</p> <p>--- DENOTES OUTLINE OF PROPOSED SHADOW</p> <p>■ DENOTES AREA OF PROPOSED ADDITIONAL SHADOW</p> <p>■ DENOTES AREA OF EXISTING SHADOW</p>	<p>PROJECT:</p> <p>PROPOSED DEMOLITION OF EXISTING & INCL. SWIMMING POOL & LANDSCAPING</p> <p>CLIENT:</p> <p>JEREMY CLEWER & MARK ARNOLD</p> <p>LOCATION:</p> <p>208 WHALE BEACH ROAD, WHALE BEACH, NSW</p>	<p>PROJECT STAGE:</p> <p>ADDITIONAL INFORMATION</p> <p>DRAWING TITLE:</p> <p>SITE PLAN</p> <p>SCALE:</p> <p>1:200 @ A3</p>	<p>DATE OF ISSUE:</p> <p>31.05.2018</p> <p>DRAWING NO.</p> <p>DA.001</p> <p>REVISION:</p> <p>A</p>	<p>2</p> <p>PROJECT: 208 WHALE BEACH ROAD, WHALE BEACH, NSW</p> <p>CLIENT: JEREMY CLEWER & MARK ARNOLD</p> <p>DATE OF ISSUE: 31.05.2018</p> <p>DRAWING NO: DA.001</p> <p>REVISION: A</p> <p>SCALE: 1:200 @ A3</p>
---	---	---	--	---	---	--



LOWER GROUND FLOOR - 19.18
NORTH ELEVATION 1:50 @ A1 OR 1:100 @ A3

<p>LEGEND:</p> <p> DENOTES EXISTING SPOT LEVEL</p> <p> DENOTES PROPOSED LEVEL</p> <p>RL 7.10 NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION, FOR APPROVAL ONLY. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE B.C. ENVIRONMENTAL MANAGEMENT ACT 2000 AND THE B.C. ENVIRONMENTAL MANAGEMENT REGULATIONS 2001. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE B.C. ENVIRONMENTAL MANAGEMENT ACT 2000 AND THE B.C. ENVIRONMENTAL MANAGEMENT REGULATIONS 2001.</p>	<p>KEY:</p> <p> DENOTES OUTLINE OF EXISTING TREES TO BE REMOVED</p> <p> DENOTES OUTLINE OF EXISTING BUILDING TO BE DEMOLISHED</p> <p> DENOTES OUTLINE OF EXISTING SHADOW</p> <p> DENOTES OUTLINE OF PROPOSED SHADOW</p> <p> DENOTES AREA OF PROPOSED ADDITIONAL SHADOW</p> <p> DENOTES AREA OF EXISTING SHADOW</p>	<p>PROJECT:</p> <p>PROPOSED DEMOLITION OF EXISTING & INCL. SWIMMING POOL & LANDSCAPING</p> <p>CLIENT:</p> <p>JEREMY CLEWER & MARK ARNOLD</p> <p>LOCATION:</p> <p>208 WHALE BEACH ROAD, WHALE BEACH, NSW</p>	<p>PROJECT STAGE:</p> <p>ADDITIONAL INFORMATION</p> <p>DRAWING TITLE:</p> <p>ELEVATION SHEET 01</p> <p>SCALE:</p> <p>1:100 @ A3</p>	<p>DATE OF ISSUE:</p> <p>31.05.2018</p> <p>DRAWING NO.</p> <p>DA-300</p> <p>REVISION:</p> <p>A</p>	<p>PROJECT:</p> <p>PROPOSED DEMOLITION OF EXISTING & INCL. SWIMMING POOL & LANDSCAPING</p> <p>CLIENT:</p> <p>JEREMY CLEWER & MARK ARNOLD</p> <p>LOCATION:</p> <p>208 WHALE BEACH ROAD, WHALE BEACH, NSW</p>
--	---	--	--	---	--

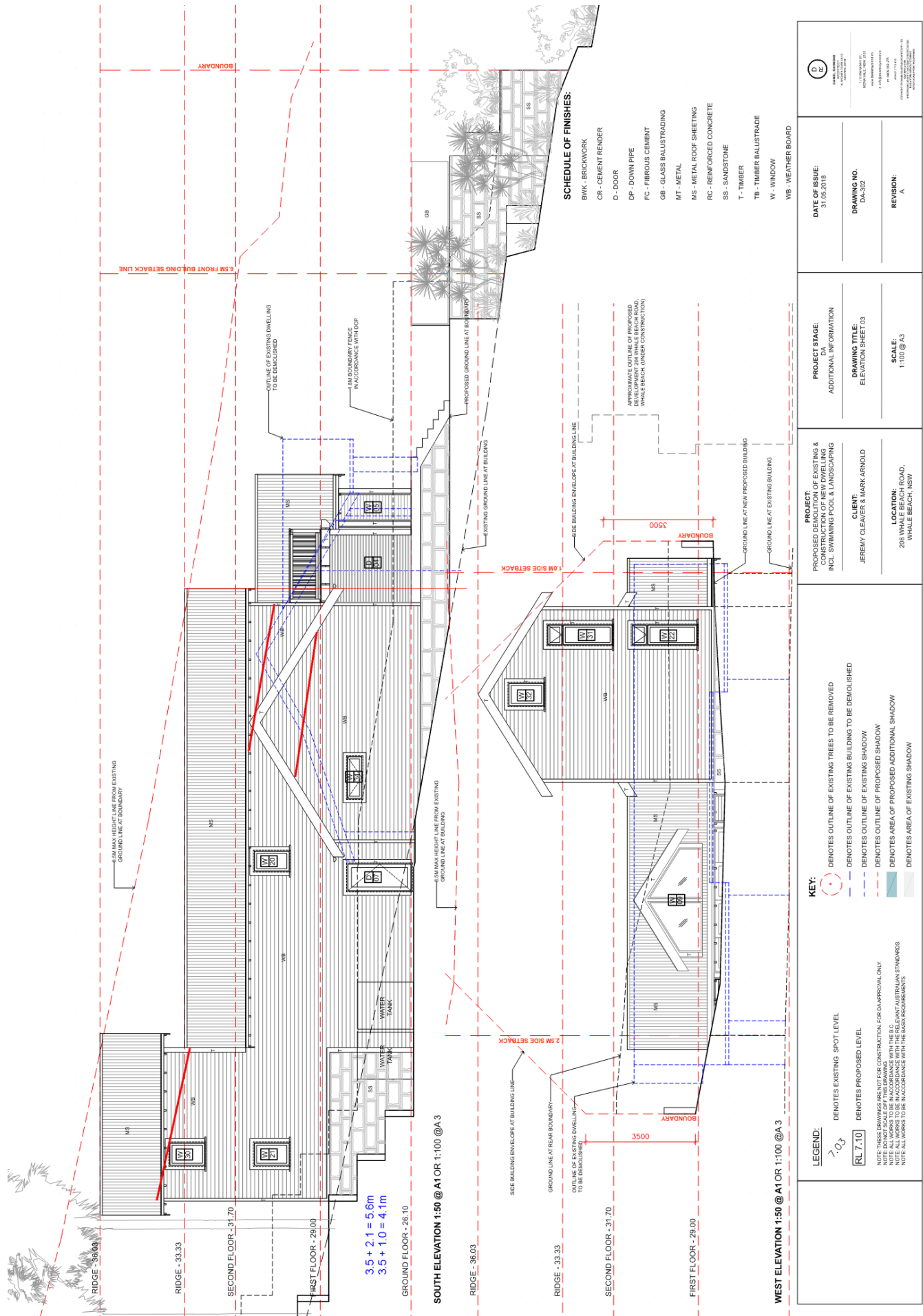


SCHEDULE OF FINISHES:

- BWK - BRICKWORK
- CR - CEMENT RENDER
- D - DOOR
- DP - DOWN PIPE
- FC - FIBROUS CEMENT
- GB - GLASS BALUSTRADE
- MT - METAL
- MS - METAL ROOF SHEETING
- RC - REINFORCED CONCRETE
- SS - SANDSTONE
- T - TIMBER
- TB - TIMBER BALUSTRADE
- W - WINDOW
- WB - WEATHER BOARD

<p>DATE OF ISSUE: 31.05.2018</p> <p>DRAWING NO.: DA-301</p> <p>REVISION: A</p>	<p>PROJECT STAGE: ADDITIONAL INFORMATION</p> <p>DRAWING TITLE: ELEVATION SHEET 02</p> <p>SCALE: 1:100 @ A3</p>	<p>PROJECT: PROPOSED DEMOLITION OF EXISTING & INCL. SWIMMING POOL & LANDSCAPING</p> <p>CLIENT: JEREMY CLEWER & MARK ARNOLD</p> <p>LOCATION: 208 WHALE BEACH ROAD, WHALE BEACH, NSW</p>	<p>KEY:</p> <ul style="list-style-type: none"> ○ DENOTES OUTLINE OF EXISTING TREES TO BE REMOVED --- DENOTES OUTLINE OF EXISTING BUILDING TO BE DEMOLISHED --- DENOTES OUTLINE OF EXISTING SHADOW --- DENOTES OUTLINE OF PROPOSED SHADOW ■ DENOTES AREA OF PROPOSED ADDITIONAL SHADOW ■ DENOTES AREA OF EXISTING SHADOW 	<p>LEGEND:</p> <ul style="list-style-type: none"> ○ DENOTES EXISTING SPOT LEVEL ○ DENOTES PROPOSED LEVEL <p>NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION, FOR CLARIFICATION ONLY. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE B.C. STANDARD AUSTRALIAN STANDARDS NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE B.C. STANDARD AUSTRALIAN STANDARDS</p>
---	---	---	--	---

EAST ELEVATION 1:50 @ A1 OR 1:100 @ A3



ITEM 3.2 **DA2018/0508 - 5 JOANNE PLACE, BILGOLA PLATEAU -
CONSTRUCTION OF TWO STOREY DECK****REPORTING MANAGER** **Matthew Edmonds****TRIM FILE REF** **2018/516750****ATTACHMENTS** 1 [↓](#) **Assessment Report**
2 [↓](#) **Site Plan and Elevations****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 DA2018/0508 for Construction of two storey deck on land at Lot 1 DP 530589, 5 Joanne Place, Bilgola Plateau, subject to the conditions outlined in the Assessment Report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 22 August 2018

5 Joanne Place Bilgola Plateau - Construction of two storey deck

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0508
Responsible Officer:	Kevin Short
Land to be developed (Address):	Lot 1 DP 530589, 5 Joanne Place BILGOLA PLATEAU NSW 2107
Proposed Development:	Construction of two storey deck
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	Travis Joseph Michael Denise Sharon Michael Anthony George Michael
Applicant:	Travis Joseph Michael Denise Sharon Michael Anthony George Michael
Application lodged:	03/04/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	12/04/2018 to 26/04/2018
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 96,011.52

ASSESSMENT INTRODUCTION

DA2018/0508

Page 1 of 27



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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - D3.7 Side and rear building line
Pittwater 21 Development Control Plan - D3.9 Building envelope
Pittwater 21 Development Control Plan - D3.14 Construction, Retaining walls, terracing and undercroft areas

SITE DESCRIPTION

Property Description:	Lot 1 DP 530589 , 5 Joanne Place BILGOLA PLATEAU NSW 2107
Detailed Site Description:	<p>The subject site is irregular in shape, has an area of 851.7m² and is located on the western side of the crest of Bilgola Plateau within steep sloping topography up to 30°. A three (3) storey dwelling house occupies the eastern front portion of the site. No parking areas are provided on-site and vehicular access to the site is provided from Joanne Place.</p> <p>The subject site is zoned E4 Environmental Living and affected by landslip and flood (low risk). Adjoining and surrounding development is characterised by a mixture of modern and traditional style two and three storey dwelling houses in landscape settings.</p>

Map:



SITE HISTORY

Development Consent N0867/03 for Construction of a carport, stairs to the existing dwelling and an entry foyer at the entrance of the existing dwelling was approved 16 January 2004.

PROPOSED DEVELOPMENT IN DETAIL

Development consent is sought for the alterations and additions to the existing dwelling house comprising the following works;

- Lower floor level: demolition of existing deck and construction of a new deck with privacy screens to provide for new deck with privacy screening to northern and southern elevations;
- First floor level: demolition of existing deck and construction of a new deck, replacement door and window openings and privacy screening to northern and southern elevations;
- Minor excavation works for steel framed pier and beams and concrete footing; and
- External materials and finishes including timber decking, aluminium framed glass doors and windows, glass balustrades and low pitch metal skillion roof.

Revised Plans

The applicant submitted revised plans to clarify that the height of the side elevation privacy screens was 1.8m. In accordance with the P21 DCP notification requirements, the revised plans do not require re-notification.

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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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 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> <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 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> <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 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 Pittwater 21 Development Control Plan 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 of the application Council received no submissions.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposal is acceptable, subject to the recommended conditions to protect existing street trees.
NECC (Bushland and Biodiversity)	The site is subject to DCP Clause B4.7 (Pittwater Spotted Gum Forest EEC). The proposed structure is located within the existing development footprint (managed turf) and generally more than 5m from existing locally native canopy trees. The development is therefore unlikely to impact upon existing locally native canopy trees

DA2018/0508

Page 5 of 27



Internal Referral Body	Comments
	and can be undertaken in accordance with the controls of Clause B4.7. The Bushland and Biodiversity Team raise no objections to the proposal, subject to recommended conditions of consent.
NECC (Development Engineering)	Development Engineering do not raise concern subject to recommended conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.
NSW Rural Fire Service – local branch (s79BA EPAA)	The application was referred to the NSW Rural Fire Service and no concerns were raised subject to conditions which have been included in the Recommendation of the report.

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 the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A311457 dated 23 March 2018). 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

DA2018/0508

Page 6 of 27



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.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.2m	31.8% (2.7m)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

The maximum height of the dwelling house is 11.2m which does not comply with the maximum 8.5m building height standard of PLEP 2014 for this site.

DA2018/0508

Page 7 of 27



The slope of the site is calculated being greater than 30°. In this circumstance, subclause (2D) of the control may permit the maximum building height to exceed 8.5m, but not be more than 10.0m provided the portion of the building above the maximum height is minor. The extent of the non-compliance is not minor, being 1.2m (12%) above 10m, and therefore, a PLEP clause 4.6 variation is required.

The variation to the development standard (i.e. 8.5m) is assessed in detail under the 4.6 Exceptions to development standards section of the report where it is supported on merit.

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:	11.2m
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	31.8% (2.7m)

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 PLEP 2014. 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 PLEP 2014 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 PLEP 2014 are provided below.

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

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

Comment:

The area of non-compliance relates to the upper portion of the deck structures and roof above.

Adjoining and surrounding development comprises a mixture of traditional and modern two (2) and three (3) storey dwellings located within steep topography (> 30°). The existing dwelling is three (3) storeys in height and scale with a modest building footprint as evident by landscaped area being calculated at 79%. In this regard, the site is consistent with the desired character of the Bilgola Locality by virtue of its height and scale.

The proposal seeks to delete the existing rear elevation decks on the lower and upper floor levels and construct two (2) larger size decks in place with a low pitch skillion roof. As a consequence of the

DA2018/0508

Page 8 of 27



localised slope and sandstone rock boulders located beneath the area of the proposed decks and roof, the maximum height of the dwelling measured from the deck roof will increase by 3.2m, from 8.0m to 11.2m.

Whilst the proposed works will increase the height of the maximum height of the dwelling, the built form will remain three (3) storeys in scale with 75% landscaped area and thus remain consistent with the desired character of the Bilgola Locality by virtue of its height and scale.

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

Comment:

As provided above, the height and scale of the dwelling will remain compatible with that of surrounding and nearby development.

c) to minimise any overshadowing of neighbouring properties

Comment:

A reasonable and acceptable level of solar access is maintained to adjoining residential properties.

d) to allow for the reasonable sharing of views

Comment:

View sharing is maintained by the proposal.

e) to encourage buildings that are designed to respond sensitively to the natural topography

Comment:

The decks are of pier and beam construction to minimise site disturbance of the steep topography and areas of rock outcrop.

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

Comment:

The non-compliance relates to open deck areas which exhibit minimal bulk and scale and landscaped area is calculated at 75%.

Conclusion: As detailed above, the proposal is consistent with the objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014.

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 E4 Environmental Living zone.

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

Comment: As detailed previously, the development will cause minimal site disturbance and will therefore maintain the ecological, scientific or aesthetic values of the locality.

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

DA2018/0508

Page 9 of 27



Comment: As noted above, the development will cause minimal site disturbance and will therefore maintain the ecological, scientific or aesthetic values of the locality.

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

Comment: The development provides for the housing needs of the community in providing a dwelling house of acceptable bulk and scale within a landscape setting which will harmonise with the surrounding natural environment.

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

Comment: As noted above, the development will cause minimal site disturbance and will therefore maintain riparian and foreshore vegetation and wildlife corridors.

Conclusion: As detailed above, the proposal is consistent with the objectives of the E4 Environmental Living zone.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the PLEP 2014?

(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 proposal seeks to vary Clause 4.3 - Height of Buildings Standard for the upper portion of the deck structures and roof above. In doing so, the variation will provide an appropriate degree of flexibility for the location of principle living areas on a site constrained by a steep slope; the location of the existing dwelling; and areas of rock outcrops in conjunction with minimising site disturbance.

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

Comment:

Enforcing compliance with the numerical standard in this instance would not achieve a better planning outcome as the non-complying elements relate to open deck structures and a skillion roof form which are of minimal bulk and scale and located where it will not cause adverse neighbour amenity impacts.

(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 c.

(b) that there are sufficient environmental planning grounds to justify contravening the deve



Comment:

The applicant has provided a written request which adequately justifies the contravention of the Development Standard for the following reasons:

- a) The proposal satisfies the objectives of PLEP cl. 4.3 – Height of Buildings; the Objectives of the
- b) The variation occurs as a result of the siting of the existing building and sloping topography of the
- c) The bulk and scale of the proposed development is appropriate for the site and locality; and
- d) Strict compliance with the maximum building height control would be unreasonable and unnecessary

The justification provided by the Applicant for the Clause 4.6 Variation is concurred with.

(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
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the zone

Comment:

The proposal is considered to be in the public interest as no submissions were received and it is consistent with the Objectives of the E4 Environmental Living zone in the PLEP 2014. It is also noted that the compliance could be achieved by reducing the area of the decks. However, this is not reasonable given the current proposal is an acceptable planning outcome and one which satisfies the objectives of the development standard and that the environmental planning grounds for a departure from the development standard are sufficient and considered to be consistent with recent Land and Environment Court case decisions, including *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 9, *Moskovich v Waverley Council* [2016] NSWLEC 1015, *Randwick City Council v Mical Holdings Pty Ltd* [2016] NSWLEC 7 and *Wehbe v Pittwater Council* [2007] NSWLEC 827 42.

For reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living zone in the PLEP 2014.

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

Comment:

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard is assumed.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	N/A	N/A	N/A
Rear building line	6.5m	22m	N/A	Yes



Side building line	2.5m	1.5m	40% (1.0m)	No
	1m	0.7m to 1.0m	30% (0.3m)	No
Building envelope	3.5m	outside envelope	up to 100%	No
	3.5m	outside envelope	up to 100%	No
Landscaped area	60%	75%	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.3 Bilgola Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	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
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
C1.23 Eaves	Yes	Yes
D3.1 Character as viewed from a public place	Yes	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	Yes	Yes
D3.7 Side and rear building line	No	Yes
D3.9 Building envelope	No	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D3.14 Construction, Retaining walls, terracing and undercroft areas	No	Yes
D3.15 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D3.7 Side and rear building line

DA2018/0508

Page 12 of 27



The northern elevation ground and upper floor decks have 1.9m side building lines which do not comply with the numerical 2.5m requirement of the control. Notwithstanding, the non-compliance is supported for the following reasons:

- The decks are maintaining the existing side building line of the existing dwelling house;
- The decks are of open structures of minimal bulk and scale and will complement the architectural style of the existing dwelling;
- The siting of the building is considered an appropriate design response to the constraints of the site, including localised steep slopes and the location of rock outcrops; and
- The non-compliance does not generate unreasonable or unacceptable adverse amenity impacts on adjoining and surrounding properties, including visual outlook, view loss, overshadowing or privacy.

D3.9 Building envelope

The ground and upper floor level decks and roof above are located outside of the projected building envelope. However, the deck structures do not contain any external walls and therefore do not cause a technical non-compliance with the control. Roof eaves are permitted within the projected building envelope as a variation. In addition, the decks and roof above do not result in any unreasonable impacts upon adjoining properties nor exhibit excessive bulk and scale.

D3.14 Construction, Retaining walls, terracing and undercroft areas

The undercroft area has a maximum height of 3.9m which exceeds the maximum 3.0m requirement of the control. Notwithstanding, the non-compliance is supported being reasonable for the following reasons;

- Excavation works and site disturbance are minor and limited to fixing pier and beam steel posts;
- The localised steepness at the rear of the site; and
- The height of the undercroft level is consistent with that of adjoining and surrounding residential development.

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

Pittwater Section 94 Development Contributions Plan

CONCLUSION

DA2018/0508

Page 13 of 27



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, 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 Development Consent to DA2018/0508 for Construction of two storey deck on land at Lot 1 DP 530589, 5 Joanne Place, BILGOLA PLATEAU, 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		
Drawings No.	Dated	Prepared By
Rev A DA01 to DA09	23/03/18	Canvas Architecture and Design

DA2018/0508

Page 14 of 27



Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment	29 March 2018	JK Geotechnics
Recommended Conditions	11 April 2018	NSW Rural Fire Service

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

2. Amendments to the approved plans

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

- o The privacy screens are to have no individual opening more than 30mm wide; have a total area of all openings that is less than 25 per cent of the surface area of the screen; and be permanently fixed and made of durable materials.

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.

3. Prescribed conditions (Demolition):

- (a) 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 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
 - (ii) 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.

- (b) 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.

- (c) 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.

Reason: Legislative Requirement (DACPLB09)

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

DA2018/0508

Page 16 of 27



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 (Demolition):**

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

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

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

(b) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. 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) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)



(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.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

6. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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



7. **Security Bond**

A bond (determined from cost of works) of \$1,500 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. **Stormwater Disposal**

Stormwater shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's PITTWATER DCP21. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Council's specification are to be submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate.

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

9. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Assessment report prepared by JK Geotechnics dated 29 March 2018 are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Soil and Water Management Program**

A Soil and Water Management Plan prepared in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and implemented on site until the works are completed.

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

DA2018/0508

Page 20 of 27



Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACHPC02)

11. Compliance with standards (Demolition):

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 Council prior to the commencement of demolition works.

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

12. Compliance with Standards

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

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

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

13. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. Tree protection

A) Existing trees and vegetation shall be retained as follows,

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

B) Tree protection shall be undertaken as follows:

i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites,

ii) any tree roots exposed during excavation within the TPZ must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,



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 are to be cut from protected trees unless authorised by an Arborist on site,

v) all structures are to bridge tree roots unless directed by an Arborist on site,

vi) should either or both iv) and v) occur during site establishment and construction works, the Arborist shall provide recommendations for tree protection measures provided. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority.

Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites, and protect the existing amenity that trees and/or bushland vegetation provide.

15. **Tree Protection Measures**

A 1.8 metre high construction fencing shall be installed to protect existing street trees within the street frontage, placed at the back of kerb and at least two metres from the tree trunks in all other direction, whilst allowing for the continuation of the pedestrian access. The fencing should be placed against the trunk if the slope gradient will not support the placement of the fence.

Reason: To ensure tree protection is provided and maintained (Control B.22)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **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.

17. **Signage – No work / storage within dripline**

The project manager is to erect signs advising all contractors and visitors to the site that no works or storage are to take place within the dripline of existing trees.

Reason: To protect and retain trees proposed for retention.

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

18. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards, Codes and recommendations from JK Geotechnics 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

19. **Stormwater Disposal**

DA2018/0508

Page 22 of 27



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.

Note: The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

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

20. **Geotechnical Certification Recommendations have been Implemented**

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.

Reason: To ensure geotechnical risk is mitigated appropriately.

21. **Restoration of Damaged Public Infrastructure**

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.

Reason: To ensure public infrastructure is returned to the state it was in prior to development

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

22. **Building materials, sedimentation**

No building materials or other materials are to be placed on or enter areas of bushland, wetland, saltmarsh, seagrass or foreshore vegetation.

Reason: Environmental Protection

23. **Works to cease if item found**

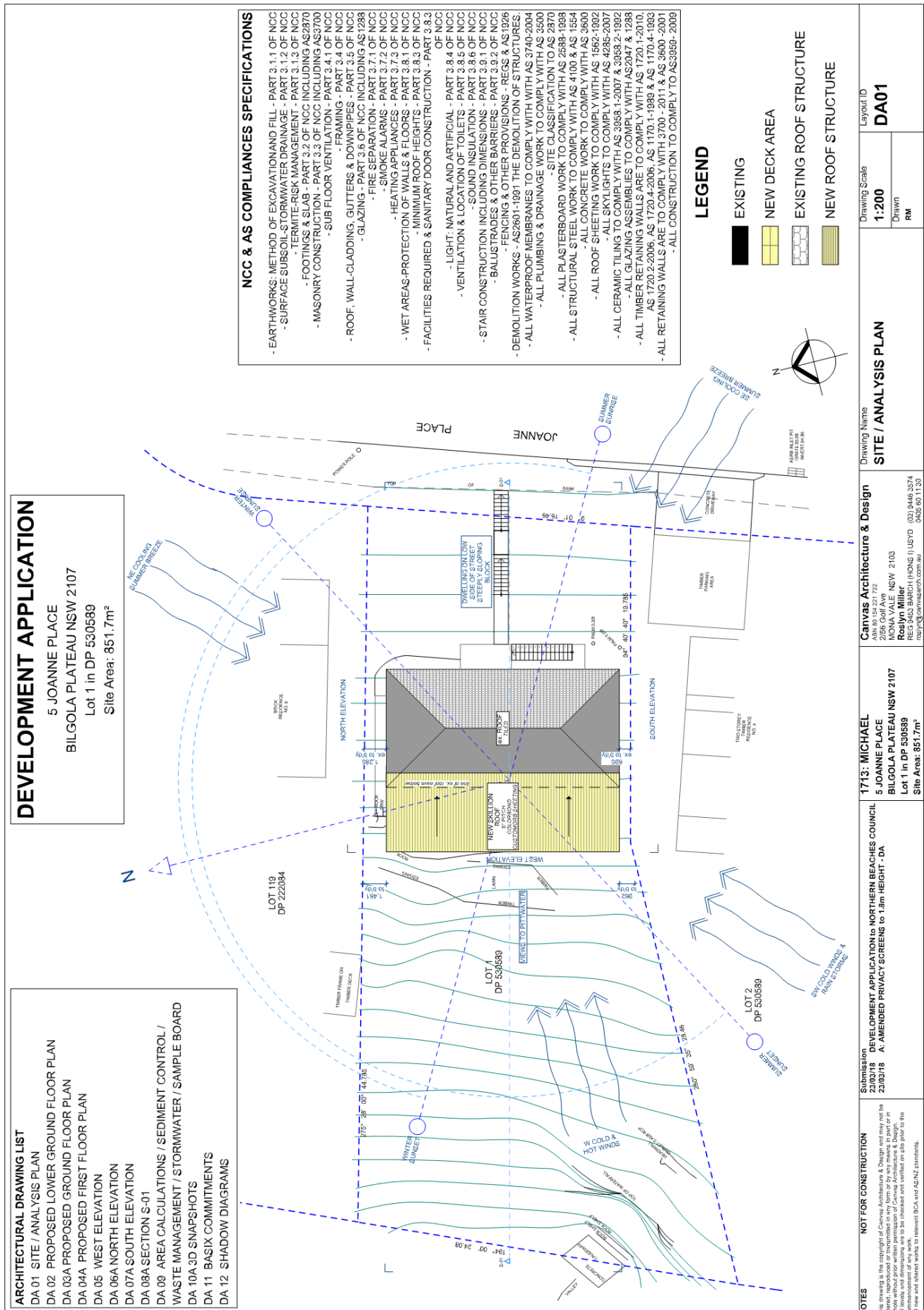
If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

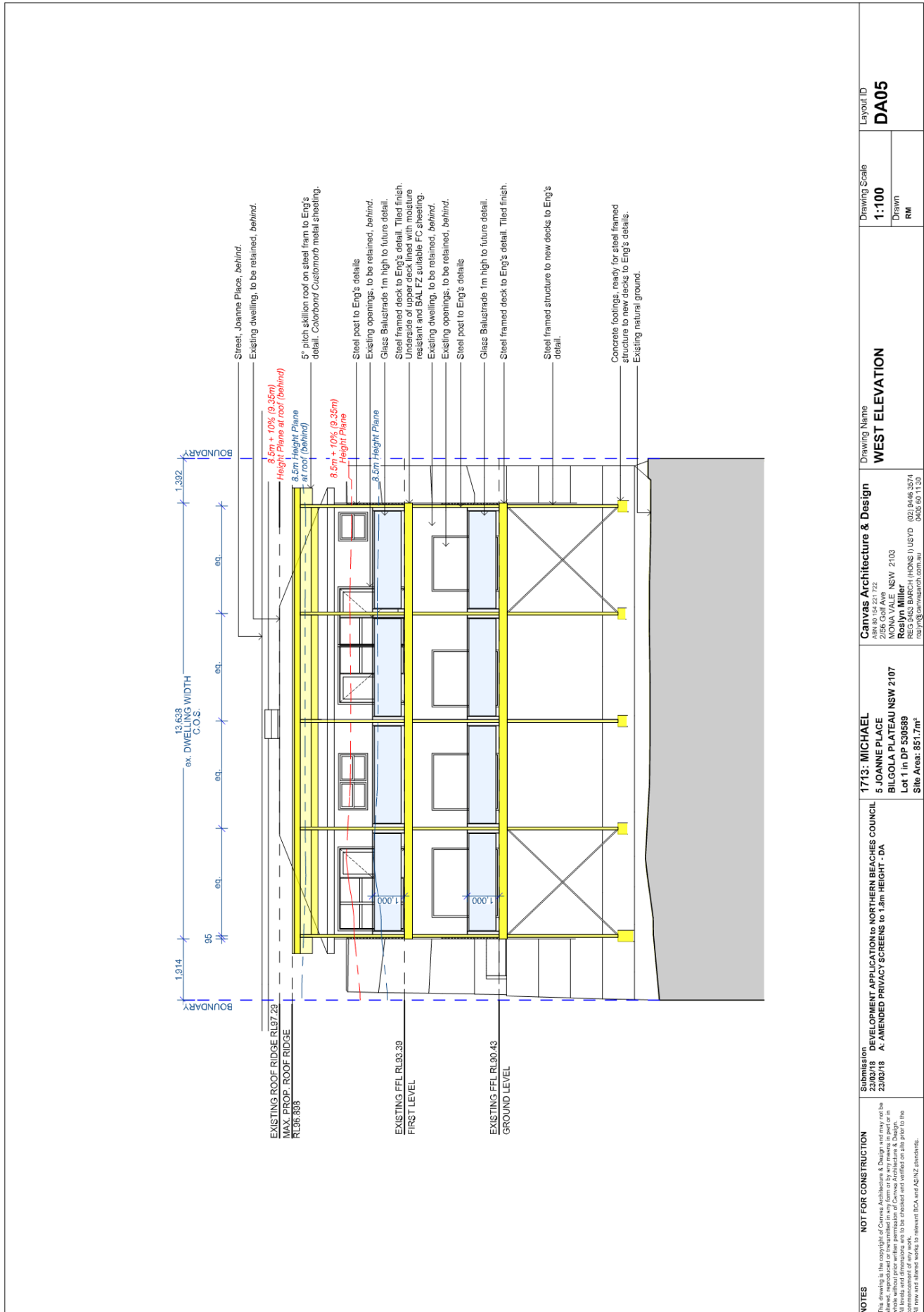
Reason: To protect Aboriginal Heritage.

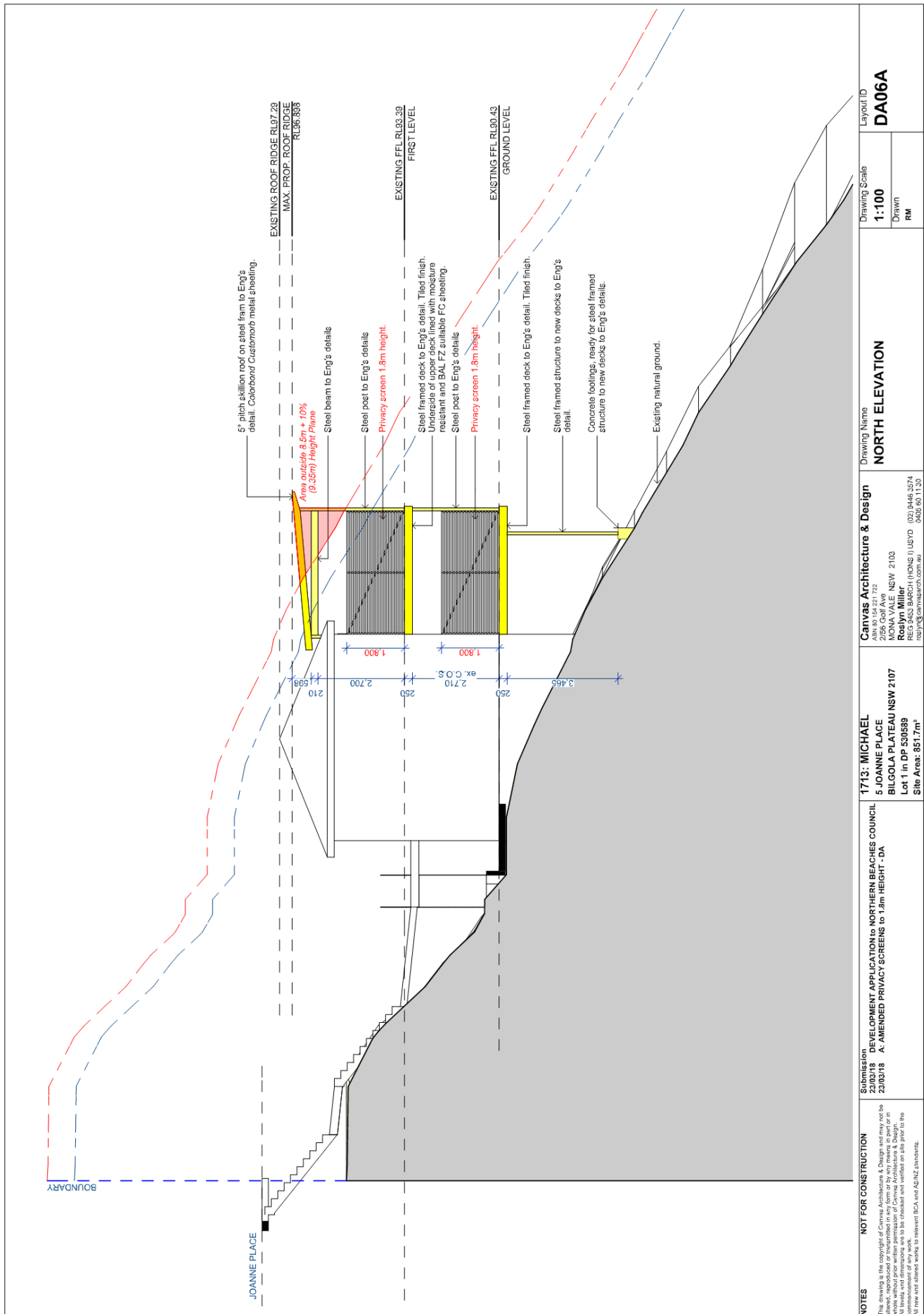
24. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.









ITEM 3.3**DA2018/0816 - 5 EDGECLIFFE ESPLANADE, SEAFORTH -
ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING
HOUSE****REPORTING MANAGER****Rodney Piggott****TRIM FILE REF****2018/516788****ATTACHMENTS**

- 1** [↓](#) **Assessment Report**
- 2** [↓](#) **Site Plan and Elevations**

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 and floor space ratio standards.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/0816 for Alterations and additions to the existing dwelling house on land at Lot 324 DP 4889, 5 Edgecliffe Esplanade, Seaforth, subject to the conditions outlined in the Assessment Report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 22 August 2018

5 Edgecliffe Esplanade Seaforth - Alterations and additions to the existing dwelling house.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0816
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 324 DP 4889, 5 Edgecliffe Esplanade SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to the existing dwelling house.
Zoning:	Manly LEP2013 - 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:	Tianyang Xu
Applicant:	Anna Wang
Application lodged:	18/05/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/06/2018 to 20/06/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 31,620.00

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)
DA2018/0816 Page 1 of 27



taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 324 DP 4889 , 5 Edgecliffe Esplanade SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists allotment located on the south-eastern side of Edgecliffe Esplanade.</p> <p>The site is regular in shape with a frontage of 20.085m along Edgecliffe Esplanade and a depth of approximately 38m. The site has a area of 786m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house on site.</p> <p>The site has a steep slope from the ridge of the road to the rear of the property.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by by dwelling houses, with houses downslope on the south-eastern side of the road and up slope on the north-west side of the road.</p>

Map:



SITE HISTORY

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

- DA410/2002 for New Dwelling was approved under delegation on 15.04.2003
- DA122/2204 for a new dwelling, swimming pool and garage was refused by DAU on 28.09.2004
- DA5/2005 for a multi levelled dwelling, driveway and swimming pool was approved under delegation on 20.05.05

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for the enclosure of an existing balcony to become a sunroom.

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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A 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>Clause 50(1A) 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> <p>Clauses 54 and 109 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>Clause 92 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>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p>Clause 98 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>Clause 98 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> <p>Clause 143A 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 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 Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact</p>



Section 4.15 Matters for Consideration'	Comments
	<p>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 1 submission/s from:

Name:	Address:
Mr Gregory Harrison	26 Edgecliff Esplanade SEAFORTH NSW 2092

The following issues were raised in the submissions and each have been addressed below:

- Plans not available for viewing during submission.

The matters raised within the submissions are addressed as follows:

- Plans not available for viewing during submission.
Comment:
An administration error meant that plans were unable to be viewed in the original notification period. As such, the application was re-notified in accordance with the Manly DCP 2013 and no further submission was made.

MEDIATION



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

REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.

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?	
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	12m	41.1%	No, see comments.
Special height Provisions	Must not exceed highest point of adjoining road (RL55.60)	RL53.1	N/A	Yes.
Floor Space Ratio Site area:786sqm	FSR: 0.4:1 (314.4sqm)	FSR: 0.51:1 (401sqm)	27.5%	No, see comments.

Compliance Assessment



Clause	Compliance with Requirements
4.3 Height of buildings	No
4.3A Special height provisions	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Requirement:	8.5m
Proposed:	12m
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	41.1%

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 MLEP 2013. 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 MLEP 2013 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 MLEP 2013 are:

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

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

Comment:

As a result of the topographic landscape, the existing dwelling along has a building height that is non-compliant with the control for wall height. However, the proposed enclosure of the balcony would result in a feature that is within the existing building footprint and below the ridge of the road (to be consistent with the development standard 'Special height provisions').

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



Comment:

The proposal is for the enclosure of an existing balcony area that is above the standard for building height. As a result of being within the existing building envelope and having an adequate physical separation to the street and surrounding land uses, the control on bulk and scale is reasonable.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

The subject site and surrounding sites have views available toward the harbour and 'the spit'. As a result of the the compliant rear setback and the enclosure of the balcony being within the existing footprint, adequate views are maintained in this direction.

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

Comment:

The proposal is compliant with the controls for Sunlight Access and Overshadowing under the Manly DCP, 2013 which ensures the development would provide reasonable solar access.

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

Comment:

The subject site is not in a recreation or environmental protection zone.

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 proposal maintains the existing residential use of the site.

DA2018/0816

Page 8 of 27



- It is considered that the development satisfies this objective.
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

Not applicable.

It is considered that the development satisfies this objective.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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:

In this circumstance, providing flexibility to the height of building development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the street context.

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

Comment:

It is appropriate to allow flexibility in this circumstance as the height is below the existing height which means there would not be an unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

(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:

DA2018/0816

Page 9 of 27



The applicant has provided the following reasoning in a written request to contravene the standard:

"The land is sloped, it is within the existing building envelope, and the proposed height does not exceed the existing height of the existing building."

(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 applicants 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 MLEP 2013.

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

Comment:

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to the development standards under environmental planning instruments that adopt Clause 4.6 of the standard instrument where the variation to a numerical standard is no greater than 10%. In this case there is a variation of greater than 10% and as such the application has been referred to the Development Determination Panel.

Floor Space Ratio

Requirement:	0.4:1 (314.4sqm)
Proposed:	0.51:1 (401sqm)
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	27.5%

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 MLEP 2013. 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 MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

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

Comment:

The proposal is within the existing building foot print, below the existing height, below the road level and to the rear of the site. This location provides a situation in which the proposed works would not be easily visible from the streetscape and the presentation of bulk is accordingly minimised.

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

Comment:

The proposed siting to the rear, compliant with rear setbacks and within the building footprint ensure that there will be no unreasonable obscurement of surrounding features.

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

Comment:

The maintenance of the proposed works within the envelope and below the road level (to be compliant with the special height provisions clause) ensures the proposal will maintain an appropriate presentation for the character of the area.

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

Comment:

The compliant rear setbacks and physical separation to neighbouring properties ensures amenity for surrounding land uses will be adequately maintained.

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

Comment:

Not applicable.

DA2018/0816

Page 11 of 27

**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 proposal maintains the existing residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

Not applicable.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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:

In this circumstance, providing flexibility to the floor space ratio development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the street and topographical context.

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

Comment:

It is appropriate to allow flexibility in this circumstance as the additional floor space is within the existing building footprint and does not have an unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

(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:

The applicant has provided the following reasoning in a written request to contravene the standard:

""The zoning is R2 Low Density Residential. The objectives of the zone is to provide for the housing needs of the community within a low density residential environment, and to enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposed floor space ratio of 0.5:1 exceeds the maximum of 0.4:1 required under clause 4.4 of Manly Local Environmental Plan 2013.

It is unreasonable to comply with the standard in the circumstances of the case due to the slope of the land, and the existing building envelope remains unchanged.

It will be in the public interest because all other requirements are met and it is consistent with the objectives of the standard and the objectives for development within the zone.

The objectives of Clause 4.4 are still complied with as follows:

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

The existing bulk and scale of the building remains unchanged, hence remains consistent with the existing and desired streetscape character.

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

The existing density and bulk of the building remains unchanged, hence does not obscure landscape and townscape features.

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

The existing building envelope remains unchanged, hence does not impact existing visual relationship between the new development and the existing character and landscape of the area.

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

The existing building envelope remains unchanged, hence does not impact the use or enjoyment of adjoining land and the public domain.

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



The proposal does not impact business zones.

The non-compliance with the FSR standard seeks Council's support as the proposal is within the existing building envelope, all other requirements are met, and the objectives of Clause 4.4 are still met. It will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone."

(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 applicants 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/inconsistent with the objectives of the R2 Low Density Residential zone in the MLEP 2013.

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

Comment:

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to the development standards under environmental planning instruments that adopt Clause 4.6 of the standard instrument where the variation to a numerical standard is no greater than 10%. In this case there is a variation of greater than 10% and as such the application has been referred to the Development Determination Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 786sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 7.7m (based on gradient 1.5m)	11.4m	N/A	No, see comments.
4.1.2.2 Number of Storeys	2	3	N/A	No, see comments.
4.1.2.3 Roof Height	Height: 2.5m	0.7m	N/A	Yes.
4.1.4.2 Side Setbacks and DA2018/0816	3.8m (based on wall	3m	N/A	No, see Page 14 of 27



Secondary Street Frontages	height)			comments.
	Windows: 3m	3m	N/A	Yes.
4.1.4.4 Rear Setbacks	8m	15.8m	N/A	Yes.

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes

Detailed Assessment

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

Description of non-compliance

The proposal is non-compliant with the control for wall height being 11.4m (with the control for being 7.7m).

The proposal is also non-compliant with the control for number of storeys with the works being part of the existing third storey (with the control being 2 storeys).

Merit consideration:

With regard to the consideration for a variation, the development is considered against the controls for height of building under Clause 4.3 of the Manly LEP (which Clause 4.1.2 of the Manly DCP states are particularly relevant):

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



Comment:

As a result of the topographic landscape, the existing dwelling along has a building height that is non-compliant with the control for wall height. However, the proposed enclosure of the balcony would result in a feature that is within the existing building footprint and provide a wall that is below the existing roof of the dwelling. This provides for an adequate wall height given the context of the existing dwelling and surrounding area.

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

Comment:

The proposal is for the enclosure of an existing balcony area which would extend the wall to provide a greater section of wall that is non-compliant with the control for wall height.. As a result of being within the existing building envelope and having an adequate physical separation to the street and surrounding land uses, the control on bulk and scale is reasonable.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

The subject site and surrounding sites have views available toward the harbour and 'the spit'. As a result of the the compliant rear setback and the enclosure of the balcony being within the existing footprint, adequate views are maintained in this direction.

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

Comment:

The proposal is compliant with the controls for Sunlight Access and Overshadowing under the Manly DCP, 2013 which ensures the development would provide reasonable solar access.

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

Comment:

The subject site is not in a recreation or environmental protection zone.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent / consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported / is not supported, in this particular circumstance.

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



Description of non-compliance

The proposal is non-compliant with the side setback control being 3m with the control of 3.8m.

Merit consideration:

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

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

Comment:

The proposed worse are to the rear of the existing dwelling and within the building envelope. This provides a situation in which the proposal is appropriate in the streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

As a result of the physical separation between the proposed sun room and the neighbouring living areas and private open spaces, the proposal will provide reasonable amenity. Additionally, the compliant rear setback ensures view corridors will be preserved for surrounding dwellings.

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

Comment:

The proposal is within the existing siting of the dwelling and this adequately minimises visual impact and amenity impact.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

DA2018/0816

Page 17 of 27



The proposal is within the exiting building footprint and has no impact on natural features.

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

Comment:

Not applicable.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is inconsistent 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

DA2018/0816

Page 18 of 27



- 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 Development Consent to DA2018/0816 for Alterations and additions to the existing dwelling house, on land at Lot 324 DP 4889, 5 Edgecliffe Esplanade, SEAFORTH, 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
02- Proposed Site Plan	10.05.2017	Anna Wang
05- Existing & Proposed Floor Plan- Level 3	10.05.2017	Anna Wang
07- Existing & Proposed North Elevation	10.05.2017	Anna Wang
08- Existing & Proposed East Elevation	10.05.2017	Anna Wang

Engineering Plans		
Drawing No.	Dated	Prepared By
09 Erosion and Sediment Control Plan	10.05.2017	Anna Wang

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

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. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon
DA2018/0816 Page 19 of 27



- 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)

3. General Requirements

DA2018/0816

Page 20 of 27



- (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

4. Security Bond

A bond (determined from cost of works) of \$1,000 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

5. **Waste Management Plan**

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

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

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

6. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

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

7. **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.

Note: The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and



drainage - Stormwater drainage
(c) National Plumbing and Drainage Code.

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

RETAINING WALL CHECK
ON SITE IF REQUIRE BY
STRUCTURAL ENGINEER.

ALL SITE LEVEL WILL BE
CHECK WITH SURVEYOR
ON SITE. DATUM ASSUMED

ALL EXISTING & PROPOSED
STRUCTURAL WORK WILL
BE CHECK WITH ENGINEER
ON SITE

SELECTED STAIRS &
BALUSTRADE CONFIRM ON
SITE IF REQUIRE MUST
COMPLY WITH AS & BCA

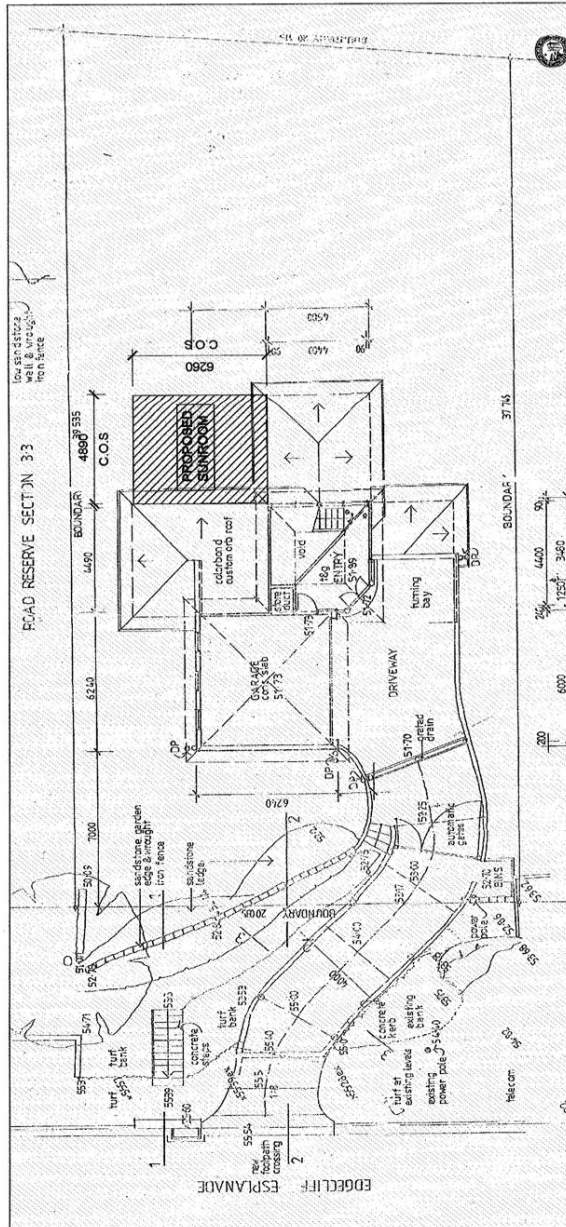
REMOVE ASBESTOS AS
NOTED IN REGISTER OF
HAZARDOUS MATERIALS
REPORT

ALL CONSTRUCTION WORK
REFER TO STRUCTURAL AND
HYDRAULIC ENGINEERING'S
DRAWINGS

ALL WORK IS TO CONFORM
TO RELEVANT AUSTRALIAN
STANDARDS AND CODES
TOGETHER WITH ALL
AUTHORITIES'
REQUIREMENTS AND
REGULATIONS.

VERIFY ALL DIMENSIONS ON
SITE BEFORE COMMENCING
WORK. REPORT ALL
DISCREPANCIES TO THE
ARCHITECT PRIOR TO
CONSTRUCTION. USE
FIGURED DIMENSIONS IN
PREFERENCE TO SCALED
DIMENSIONS.
DRAWINGS MADE TO LARGER
SCALES AND THOSE
SHOWING PARTICULAR
PARTS OF THE WORK TAKE
PRECEDENCE OVER
DRAWINGS MADE TO
SMALLER SCALES OR FOR
GENERAL PURPOSES.

ALL DIMENSIONS TO BE CHECKED
ON SITE BEFORE CONSTRUCTION
ALL REMAINING ITEMS TO BE MAKE
GOOD AND COMPLY WITH B.C.A. AND
A.S.
ALL NEW CONSTRUCTION WORKS TO
BE COMPLY WITH B.C.A. AND A.S.



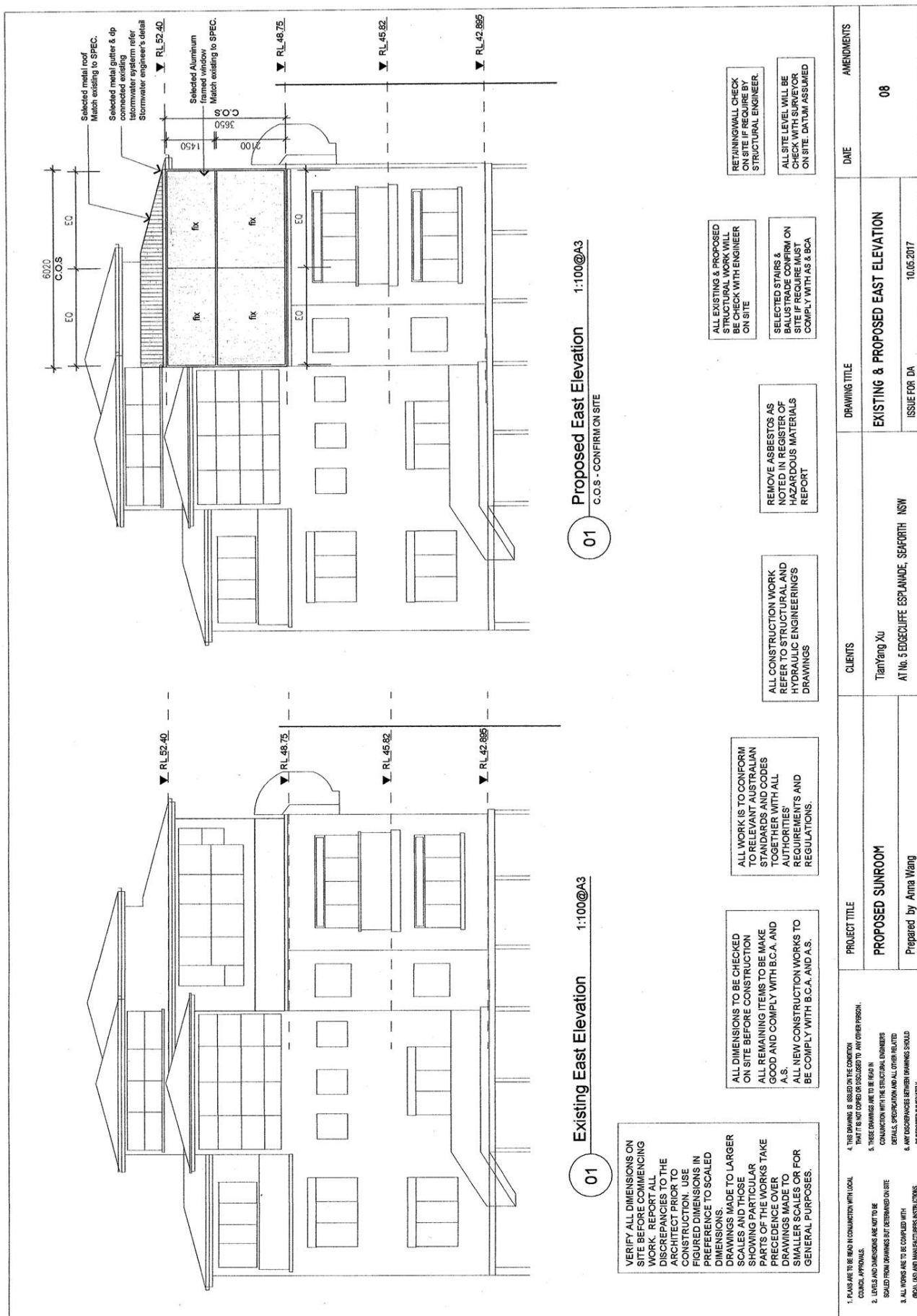
01 Proposed Site Plan
C.O.S - CONFIRM ON SITE 1:200@A3



PROJECT TITLE	CLIENTS	DRAWING TITLE	DATE	AMENDMENTS
PROPOSED SUNROOM	TianYang Xu AT No. 5 EDGECLIFF ESPRANADE, SEAFORTH NSW	PROPOSED SITE PLAN	10.05.2017	02
Prepared by Anna Wang		ISSUE FOR DA		

1. PLANS ARE TO BE READ IN CONJUNCTION WITH LOCAL COUNCIL APPROVALS.
2. LEVELS AND DIMENSIONS ARE NOT TO BE SCALED FROM DRAWINGS BUT DETERMINED ON SITE.
3. ALL WORKS ARE TO BE COMPLETED WITHIN 12 MONTHS OF THE DATE OF ISSUE.
4. THIS DRAWING IS ISSUED ON THE CONDITION THAT IT IS NOT TO BE COPIED OR DISCLOSED TO ANY OTHER PERSON.
5. THESE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH THE STRUCTURAL ENGINEERING DETAILS SPECIFICATION AND ALL OTHER RELATED DOCUMENTS.
6. ANY DISCREPANCIES BETWEEN DRAWINGS SHOULD BE REPORTED IMMEDIATELY.





ITEM 3.4	DA2018/0747 - 27 ALMA STREET, CLONTARF - ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING HOUSE
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2018/516825
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/0747 for Alterations and Additions to an existing dwelling house on land at Lot 7 DP 2610, 27 Alma Street, Clontarf, subject to the conditions outlined in the Assessment Report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 22 August 2018

27 Alma Street Clontarf - Alterations and Additions to an existing dwelling house

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0747
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot 7 DP 2610, 27 Alma Street CLONTARF NSW 2093
Proposed Development:	Alterations and Additions to an existing dwelling house
Zoning:	Manly LEP2013 - 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:	Nora Cappelen Thiis Hunt Malcolm Gregory Hunt
Applicant:	Malcolm Gregory Hunt
Application lodged:	09/05/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/05/2018 to 28/05/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 48,470.00

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)
DA2018/0747 Page 1 of 34



taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 7 DP 2610 , 27 Alma Street CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Alma Street Clontarf.</p> <p>The site is regular in shape with a frontage of 12.19m along Alma Street and a depth of 42.67m. The site has an area of 520.1m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a part two part 3 storey dwelling house.</p> <p>The site slopes from north to south and includes a crossfall of 6.87m .</p> <p>The site is landscaped with gardens and ponds. There are no significant landscape features within the vicinity of the development.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one, two and three storey dwelling houses.</p>



Map:



SITE HISTORY

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

PLM2018/0005 - A pre-lodgement meeting was held on the 6 February 2018. The proposal is consistent with the advice provided.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes the enclosure of the existing first floor terrace to be used as part of the existing dining/living rooms.

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	Manly Development Control Plan applies to this proposal.

DA2018/0747

Page 3 of 34



Section 4.15 Matters for Consideration'	Comments
any development control plan	
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 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 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> <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 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> <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 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 Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental</p>



Section 4.15 Matters for Consideration'	Comments
	social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

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 1 submission/s from:

Name:	Address:
Ms Annabelle Peri Kitchen	53 Rangers Avenue MOSMAN NSW 2088

The following issues were raised in the submissions and each have been addressed below:

- Shadow Diagrams insufficient and concerns over loss of sunlight.
- Height of adjoining windows and their impact on privacy
- Description of materials/finishes not shown
- Impairment of water view and loss of amenity.
- Non-compliance with FSR.
- Non-compliance with Height.
- Cost of works seems low.

The matters raised within the submissions are addressed as follows:

- Shadow Diagrams insufficient and concerns over loss of sunlight.
Comment:
Amended shadow diagrams were received that clearly demonstrate the impact of the proposal.
The development has been assessed below with regard to the objectives of Clause 3.4.1



Sunlight Access and Overshadowing. In summary the proposal was found to maintain an adequate access to sunlight within the locality.

- Height of Adjoining windows, Impact on privacy
Comment:
The existing deck has no screening. The proposal will enclose the deck and increase the acoustic privacy within the locality. The assessment under clause 3.4.2 Privacy and Security of the Manly DCP 2013 found the proposal will achieve a suitable level of privacy, subject to a condition requiring the fixed glaze panel W-01 and W10 to be opaque. Subject to the condition, the proposal will not result in any unreasonable privacy impacts within the locality.
- Description of materials/finishes not shown
Comment:
The plans suitably demonstrate the finishes of the proposal.
- Impairment of water view and loss of amenity.
Comment:
The view has been assessed below with regard to the Views Planning Principle. In summary the proposal was found to be satisfactory. Amenity, including privacy solar access and views, has been assessed below. The proposal was found to maintain the amenity of the locality.
- Non-compliance with FSR.
Comment:
The non-compliance with the FSR has been assessed below with regard to clause 4.6 of the Manly LEP 2013. Please see assessment below. In summary the variation was found to be satisfactory.
- Non-compliance with Height.
Comment:
The non-compliance with the building height has been assessed below in accordance with clause 4.6 of the Manly LEP 2013. Please see assessment below. In summary the variation was found to be satisfactory.
- Cost of works seems low.
Comment:
The proposal is for enclosure of a deck and the cost of works has been provided by a Licensed Builder consistent with Council's requirements.

MEDIATION

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

REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.) DA2018/0747	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is

Page 6 of 34



External Referral Body	Comments
	assumed that no objections are raised and no conditions are recommended.

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Proposed Roof 8.22m-8.75m Existing 9.2m	2.9%	No
Floor Space Ratio	FSR: 0.4:1 (208.04sqm)	FSR: 0.535:1 (278sqm) Existing 0.448:1 (233.2sqm)	33.6%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment



4.6 Exceptions to development standards

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

Requirement:	8.5m
Proposed:	8.75m
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	2.9%

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 MLEP 2013. 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 MLEP 2013 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 MLEP 2013 are:

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

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

Comment:

The proposal is located below the existing ridge level of the existing dwelling and will not be visible from the street. The proposal is a lightweight structure and will maintain the existing roof form on the site. The proposal is consistent with the prevailing building height and topographic landscape of the locality.

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

Comment:

The proposal is a lightweight mostly transparent structure located over the existing deck area. The proposal will not result in a built form that is of an unreasonable bulk and scale in the locality.

c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the

DA2018/0747

Page 8 of 34



harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

Comment:

A view loss assessment has been conducted below and found the development to maintain adequate view sharing within the locality.

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

Comment:

The proposal is located to the south and below the existing ridge level of the dwelling on the site. Due to the siting and design the proposal will not generate significant further overshadowing between 9am-3pm of the winter solstice. The proposal was accompanied by shadow diagrams that demonstrated the proposal would not result in a significant loss of solar access to the neighbouring properties.

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

Comment:

Not Applicable.

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:

It is considered that the development satisfies this objective.

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

Comment:

Not applicable.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?



(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 proposed development will maintain the sites consistency with the objectives of the zone and the objectives of the control. Furthermore the proposal will not result in any unreasonable impacts on the amenity of the locality. For these reasons the requested degree of flexibility is appropriate in this circumstance.

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

Comment:

The proposal will allow for a greater floor area and degree of amenity for the dwelling without resulting in any unreasonable impacts to the amenity of the neighbouring properties or the character of the locality. The proposal will achieve a better outcome by allowing flexibility in this circumstance.

(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:

The applicants written request provided the following justification:

"3.4 Establishing if the Development Standard is Unreasonable or Necessary

In applying the tests of Wehbe v Pittwater Council [2007] NSWLEC 827, only one of the above rationales is required to be established. Notwithstanding the proposed variation, as demonstrated in Sections 3.1 and 3.2, the proposed development is consistent with the underlying objectives of the standard for Building Heights and the R2 zone of MLEP 2013.

3.5 Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The variation to the development standard for Building Height is considered well founded because, notwithstanding the proposed non-compliance with Building Height standards:

DA2018/0747

Page 10 of 34



- *The proposed development is entirely consistent with the underlying objective or purpose of the standard as demonstrated in Section 3. 1.*
- *The objectives of the zone are still achieved.*
- *The proposal does not exceed the existing maximum height of the building currently on site.*
- *The proposed additional building height is appropriate to the location within the residential zone and does not significantly exceed the existing rear facade of the building.*
- *The proposed design of the development achieves an appropriate built form in that it enhances the public domain, character of the streetscape, including views along with providing improved internal amenity and outlook.*
- *The proposed massing of the development is considered acceptable with regard to the height controls and intent for the locality. The proposed massing is very similar to the existing building on site,*
- *The provision of a mix of facade treatments to the additions contribute to minimising the visual perception of bulk and scale of the buildings.*
- *The overall scale and bulk of the proposed building are similar to surrounding residential developments in the area, and are considered appropriate to the locality."*

(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 applicants 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 MLEP 2013.

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

Comment:

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%. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the 4.3 Height of Buildings Development Standard is assumed."



The following assessment of the variation to Clause 4.4 Floor Space Ratio has taken into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	0.4:1 (208.04sqm)
Existing:	0.448:1 (233.2sqm)
Proposed:	0.535:1 (278sqm)
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	Total 33.6% Further variation 21.5%

The proposal must satisfy the objectives of Clause 4.4 – Floor Space Ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed floor space ratio limitation pursuant to Clause 4.4 of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor Space Ratio' of the MLEP 2013 are:

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

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

Comment:

The proposal is a lightweight mostly transparent structure over the existing rear deck and below the existing ridge level of the dwelling. The proposal will not result in a significant increase to the bulk and scale of the existing development on the site and will not be visible from the street. The proposal will not impact the existing and desired streetscape character of the locality.

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

Comment:

The proposed enclosure of the deck will not add to the existing building footprint or significantly add to the building bulk. The proposal has been assessed below with regard to the views planning principle and was found to be satisfactory. The proposal will not obscure any important landscape or townscape features.



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

Comment:

The proposed enclosure of the deck does not increase the building footprint. Furthermore the structure is lightweight, mostly transparent and below the existing ridge level of the dwelling. The proposal will not result in an inappropriate visual relationship between new development and the existing character and landscape of the area.

Clause 4.1.3 of the Manly DCP 2013 specifies that 'the extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 is to be no greater than the achievable FSR for the lot size'. In this regard the minimum lot size for this site is 750sqm and the permitted FSR is 0.4:1. This clause allows a maximum gross floor area of 300sqm on this site. The proposal will result in a gross floor area of 278sqm which complies with this clause. The Manly DCP 2013 does not override the development standard within the Manly LEP 2013. However, it does provide an insight into the envisaged and desired bulk and scale of new development within the locality. The proposals consistency with this clause demonstrates that the proposal is within the desired bulk and scale for the area and will maintain an appropriate visual relationship between new development and the existing character and landscape of the area.

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

Comment:

The proposal is located within the existing building footprint and does not require the disturbance of land. The proposal has been assessed below with regard to amenity (privacy, sunlight access and views) and was found to be satisfactory. The proposal will not result in any unreasonable impacts on the use or enjoyment of adjoining land and the public domain.

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

Comment:

Not Applicable.

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:

DA2018/0747

Page 13 of 34



It is considered that the development satisfies this objective.

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

Comment:

Not applicable.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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 proposed development will maintain the sites consistency with the objectives of the zone and the objectives of the control. Furthermore the proposal will not result in any unreasonable impacts on the amenity of the locality. For these reasons the requested degree of flexibility is appropriate in this circumstance.

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

Comment:

The proposal will allow for a greater floor area and degree of amenity for the dwelling without resulting in any unreasonable impacts to the amenity of the neighbouring properties or the character of the locality. The proposal will achieve a better outcome by allowing flexibility in this circumstance.

(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:

The applicants written request provided the following justification:

"3.4 Establishing if the Development Standard is Unreasonable or Necessary

In applying the tests of Wehbe v Pittwater Council [2007] NSWLEC 827, only one of the above rationales is required to be established. Notwithstanding the proposed variation, as demonstrated in Sections 3.1 and 3.2, the proposed development is consistent with the underlying objectives of the standard for FSR and the R2 zone of MLEP 2013.

3.5 Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The variation to the development standard for FSR is considered well founded because, notwithstanding the proposed non-compliance with FSR standards:

- *The proposed development is consistent with the underlying objective or purpose of the standard as demonstrated in Section 3.1.*
- *The proposed maximum FSR for the site of 0.6 :1 is appropriate for an R2 Low Density Residential zone that primarily consists of residential development. It should be noted that the existing dwelling already exceeds the maximum density for the site as it is currently 0.5:1.*
- *The proposed building envelope is consistent with the existing building envelope s and other similar development. The proposal results in a small scale infill within the existing building envelope.*
- *The bulk and scale of the proposal is consistent with this style of residential building which is common for residential areas.*
- *The proposed building provides an appropriate height, bulk and scale to the site and is largely compliant with MLEP 2013 height provisions.*
- *The proposal will not have any impact on the existing streetscape as it is at the rear of the property.*
- *In light of the proposals contribution to achieving the desired future character of the area, a reduction of gross floor area would serve no material planning purpose, other than numerical compliance with a generic Council control.*
- *The proposal will add to delivering a mix of well-designed housing that meets the needs of Sydney's growing population unique family dwellings to meet the changing population needs.*
- *The proposed development will not significantly impact on the amenity of adjoining occupiers.*
- *The proposed development will not result in any unreasonable privacy intrusion or loss of daylight access to adjacent properties."*



(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 applicants 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 MLEP 2013.

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

Comment:

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to the development standards under environmental planning instruments that adopt Clause 4.6 of the standard instrument where the variation to a numerical standard is no greater than 10%. In this case there is a variation of greater than 10% to the Floor Space Ratio Development Standard. However, following advice from the Department of Planning and Environment, single dwellings with a variation of more than 10% for floor space ratio or building height may be determined by a delegate of Council. In this regard, given the consistency of the variation to the objectives of the zone and the objectives of the development standard, the proposal is referred to the Development Determination Panel with a recommendation for approval.



Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 520.1	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	East: 7.4m (based on gradient 1:6.8)	8.1m	9.5%	No
	West: 7.2m (based on gradient 1:9)	7.7m	6.9%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	0.8m	N/A	Yes
4.1.3 Floor Space Ratio (FSR)	Maximum FSR variation permitted is 0.4:1 based on Lot Size - 750sqm (300sqm)	278sqm	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East 2.7m	East 1.825m	32%	No
	West 2.4m	West 1m	58.3%	
4.1.4.4 Rear Setbacks	8m	14.26m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (312.06sqm)	40% (210.8sqm)	32%	No
	Open space above ground 40% of total open space	Nil		
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (84.32sqm)	56.7% (119.5sqm)	N/A	Yes
4.1.5.3 Private Open Space	18m per dwelling	210.8sqm	N/A	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes

DA2018/0747

Page 17 of 34



Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Merit consideration:

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

Objective 1) To provide equitable access to light and sunshine.

Comment:

The proposal is located over the existing deck and is a lightweight mostly transparent structure. The proposal is also below the existing ridge level of the house to the north. The shadow diagrams demonstrate that the proposal will not result in a significant increase to the overshadowing of the neighbouring properties on the winter solstice. The proposal will maintain an equitable access to light and sunshine within the locality.

Objective 2) To allow adequate sunlight to penetrate:

- private open spaces within the development site; and
- private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.

Comment:

As discussed above the proposal is suitably designed to minimise any loss of solar access within the locality. The shadow diagrams demonstrate that the proposal will not result in a significant increase in overshadowing of the private open spaces of the neighbouring properties. Furthermore the proposal will not result in any unreasonable overshadowing of living room windows. The proposal will maintain adequate solar access to private open spaces and windows to living spaces/habitable rooms within the locality.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and
- maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.



Comment:

The proposal will maintain the existing southern side setbacks and will allow for adequate penetration of mid-winter solar access within the locality.

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

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

The proposal is to enclose the existing first floor deck. The proposal is adjacent to the neighbouring deck at 25 Alma Street and will reduce any acoustic privacy impacts on the neighbouring property. However it will result in an intensification of use and create further overlooking of this property and the property at 29 Alma Street. It is recommended that a condition be imposed requiring the fixed glazed panels W-01 and W10 to be opaque. These windows are the proposed windows closest to the existing wall of the dwelling. The condition will mitigate looking across the boundaries and to the north minimising overlooking of the principal private open spaces adjoining the neighbouring dwellings. The condition will also direct the outlook to the primary view to the south. The windows W-03 and W-08 are located further to the south and will not result in any unreasonable overlooking of the private open spaces adjoining the dwellings. The proposal subject to the condition of consent will minimise loss of privacy to nearby and adjacent development and ensure the proposal maintains a reasonable level of privacy within the locality.

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

Comment:

The proposed development will increase privacy within the locality and will not compromise access to light and air. The proposal will achieve a balanced outlook and views from habitable rooms.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will maintain the sites passive surveillance of the locality.

DA2018/0747

Page 19 of 34



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

3.4.3 Maintenance of Views

Merit consideration:

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

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

A submission was received from 25 Alma Street raising concerns regarding a loss of views. An inspection of the property was conducted and the views lost were photographed. The view loss has been assessed below with regard to the views planning principle established by the NSW Land and Environment Court. The assessment found that the proposal allowed adequate view sharing for both existing and proposed development.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

An assessment of view loss has also been undertaken with reference to the Views Principle established by the NSW Land and Environment Court as follows:

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example 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, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The views lost are district views with no visible water.



Views Lost from 25 Alma Street

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:

The views are obtained from a standing position on the top floor balcony looking across the side boundary adjoining 27 Alma Street.

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 percent 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:

The property will retain extensive views to the south looking towards the rear boundary which include the land and water interface. The view loss is best described as negligible.



Views Retained from 25 Alma Street

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:

The proposal is not compliant with the floor space ratio control and the height of buildings control. The non-compliance with the height of buildings control does not directly result in the view loss. The views lost are best classified as an outlook and are not significant views. Furthermore the property will retain access to extensive views including land and water interface to the south. As such, the development is acceptable and the view sharing is reasonable.

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Comment:

The proposal will not result in any unreasonable loss of views or view creep. The proposal is satisfactory.



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

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

Description of non-compliance

The Manly DCP 2013 permits a maximum wall height of 7.4m for the eastern wall and 7.2m of the western wall. The proposed eastern wall has a height of 8.1m and the western wall has a height of 7.7m.

Merit consideration:

The Manly DCP 2013 does not contain objectives in relation to this control but refers to the objectives of Clause 4.3 Height of Buildings of the Manly LEP 2013 as having particular relevance. The development is considered against the relevant objectives as follows:

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

Comment:

The proposal is located below the existing ridge level of the existing dwelling and will not be visible from the street. The proposal is a lightweight structure and will maintain the existing roof form on the site. The proposal is consistent with the prevailing building height and topographic landscape of the locality.

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

Comment:

The proposal is a lightweight mostly transparent structure located over the existing deck area. The proposal will not result in a built form that is of an unreasonable bulk and scale in the locality.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

A view loss assessment has been conducted below and found the development to maintain adequate view sharing within the locality.

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

DA2018/0747

Page 23 of 34



Comment:

The proposal is located below the existing ridge level of the dwelling to the north. Due to the siting and design the proposal will not generate significant further overshadowing between 9am-3pm of the winter solstice. The proposal was accompanied by shadow diagrams that demonstrated the proposal would not result in a significant loss of solar access to the neighbouring properties.

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

Comment:

Not Applicable.

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

Description of non-compliance

The Manly DCP 2013 required buildings to be setback the distance equal to 1/3 of the wall height. The proposal is required to be setback 2.7m from the eastern boundary and 2.4m from the western boundary. The proposal is setback 1.825m from the eastern boundary and 1m from the western boundary.

Merit consideration:

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

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

Comment:

The proposal is set to the rear and is located over the existing deck area. As such the proposal will not impact the streetscape of the locality or landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

DA2018/0747

Page 24 of 34



The proposal will ensure and enhance local amenity for the following reasons:

- The assessment of the proposal with regard to the objectives of clause 3.4.2 Privacy and Security of the Manly DCP 2013 found that the proposal would maintain the privacy of the neighbouring properties.
- The assessment of the proposal with regard to the objectives of clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013 found that the proposal would allow adequate sunlight access to the neighbouring properties.
- The assessment of the proposal with regard to the views planning principle established by the NSW Land and Environment Court and the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 found that the proposal would maintain view sharing within the locality.
- The proposal will maintain the existing character of the streetscape and the spacing between buildings.
- The proposal will not impact traffic conditions.

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

Comment:

The proposal is consistent with the objectives of the control and will not result in any unreasonable impacts on the amenity of the neighbouring properties. The flexibility is considered to be satisfactory in this circumstance.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposal is within the existing building footprint and will maintain the natural features of the site.

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

Comment:

Not applicable.

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

4.1.5 Open Space and Landscaping



Description of non-compliance

The Manly DCP 2013 requires 60% of the site area to be provided as total open space. The proposed enclosure of the deck will result in 40% of the site area provided as total open space.

Merit consideration:

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

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

Comment:

The proposal will retain the landscape features and vegetation on the site.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposal will reduce the above ground open space and will maintain the landscaped open space at ground level.

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

Comment:

The proposal has been assessed above with regard to amenity and was found to maintain the amenity of the locality.

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

Comment:

A suitable condition is recommended to ensure stormwater is disposed appropriately

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposal will not result in the spread of weeds.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The proposal will maintain the existing wildlife habitat on the site.

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



with the relevant objectives of MDCP 2013 and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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 Development Consent to DA2018/0747 for Alterations and Additions to an existing dwelling house on land at Lot 7 DP 2610, 27 Alma Street, CLONTARF, 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
2 - Site/Site Analysis	26/4/2018	Raw Concept Designs
6 - Proposed First Floor	26/4/2018	Raw Concept Designs
7 - North-East Elevation	26/4/2018	Raw Concept Designs
8 - South-West Elevation	26/4/2018	Raw Concept Designs
9 - Sections	26/4/2018	Raw Concept Designs

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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. 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)

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.



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

- (b) 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

4. Security Bond

A bond (determined from cost of works) of \$1,000 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****5. Amendments to Approved Plans**

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

- The windows W-01 and W10 are to be amended to opaque.

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

Reason: To minimise the loss of privacy of the neighbouring properties. (DACPLCPCC1)



AREA CALCULATIONS

SITE AREA:	518.5 SQM
FLOOR AREA EXISTING DWELLING (EXCLUDING STORE, VOID & STAIRWELLS)	
FIRST FLOOR:	116.8 SQM
GROUND FLOOR:	108.4 SQM
LOWER GROUND FLOOR	37.4 SQM
TOTAL	262.6 SQM
PROPOSED ADDITION:	51.1 SQM
TOTAL PROPOSED FLOOR AREA:	313.7 SQM
SITE COVERAGE:	230.9 SQM 44.5%

LANDSCAPED AREA

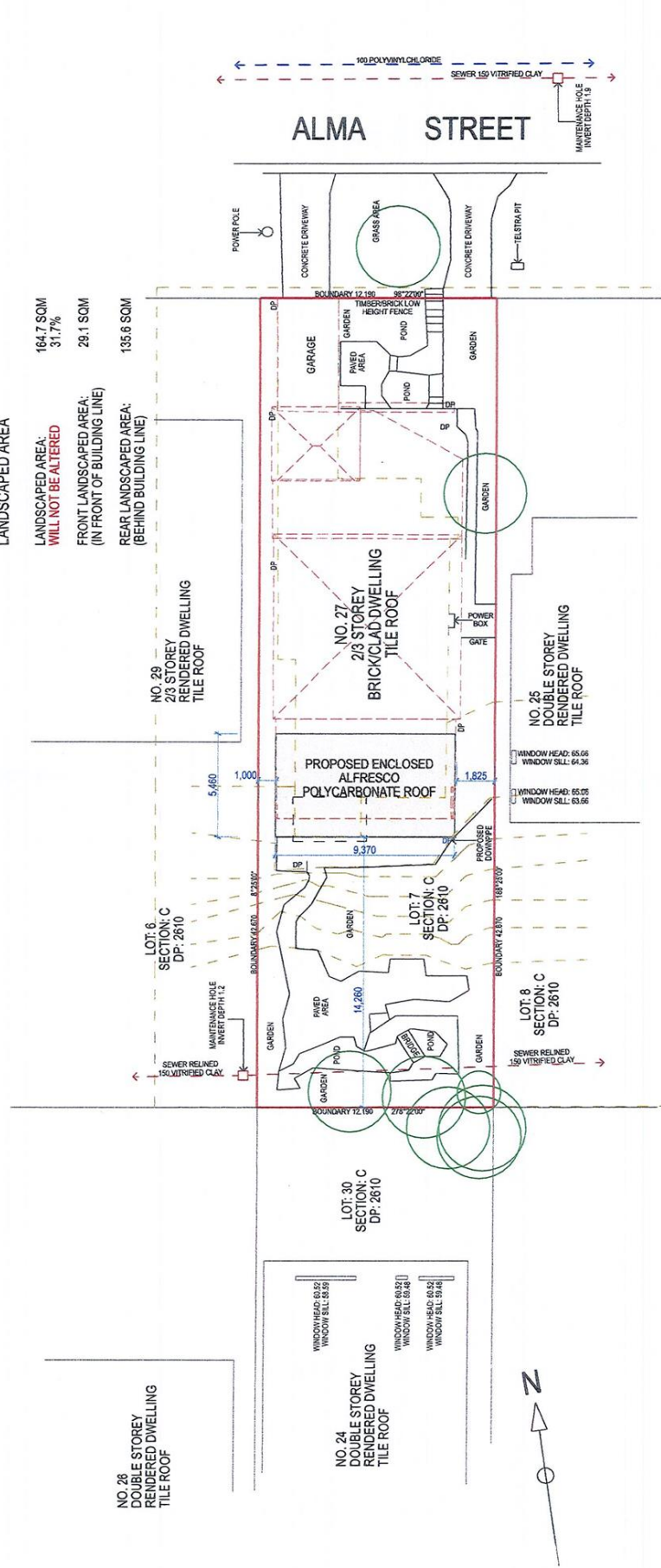
LANDSCAPED AREA: WILL NOT BE ALTERED	164.7 SQM 31.7%
FRONT LANDSCAPED AREA: (IN FRONT OF BUILDING LINE)	29.1 SQM
REAR LANDSCAPED AREA: (BEHIND BUILDING LINE)	135.6 SQM

CONSTRUCTION NOTES:

ALL WORKS TO BE CONSTRUCTED AS PER ENGINEERS SPECIFICATIONS
AND COMPLY WITH RELEVANT BCA CODES AND AUSTRALIAN STANDARDS
BUILDERS WASTE AND MATERIALS STORAGE AREA - GENERAL WASTE BIN AND RECYCLING BIN MUST BE USED
TO SORT ALL WASTE MATERIAL.
GUTTERING AND DOWNPIPES TO BE CONNECTED TO EXISTING GRAVITY FEED STORMWATER.

KEY

DP	EXISTING DOWNPIPE
DP	PROPOSED DOWNPIPE
---	SEWER
---	WATER
□	PROPOSED ADDITION



Raw Concept Designs

Client Additions

Nora and Malcolm Hunt
27 Anna Street Clontarf NSW 2033
P 0408 448 510
E malcolmhuntprod@gmail.com

Raw Concept Designs

ABN 4087818415
P 0416 184 188
E kathy@rawconceptdesigns.com.au
W www.rawconceptdesigns.com.au

General Notes
The Builder shall check all dimensions and levels on site prior to construction.
Not to any extent, responsibility or omission to the Designer.
The Designer shall not be held responsible for construction purposes until issued for
construction.
Do not scale drawings.
All boundaries and contours subject to survey.

SITE / ANALYSIS
2
1:200
26/4/18



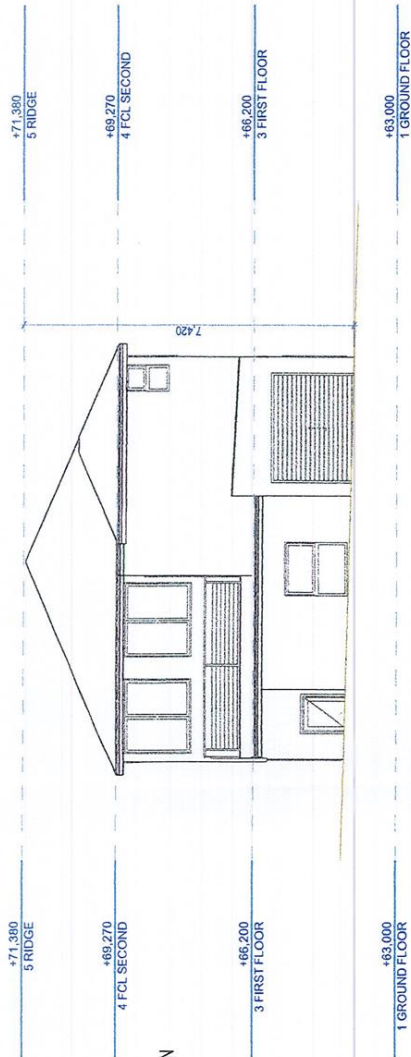
Raw Concept Designs

Client Additions
Nora and Malcolm Hunt
27 Alma Street Clontarf NSW 2033
P 0408 448 510
E malcolmhunt@bigpond.com

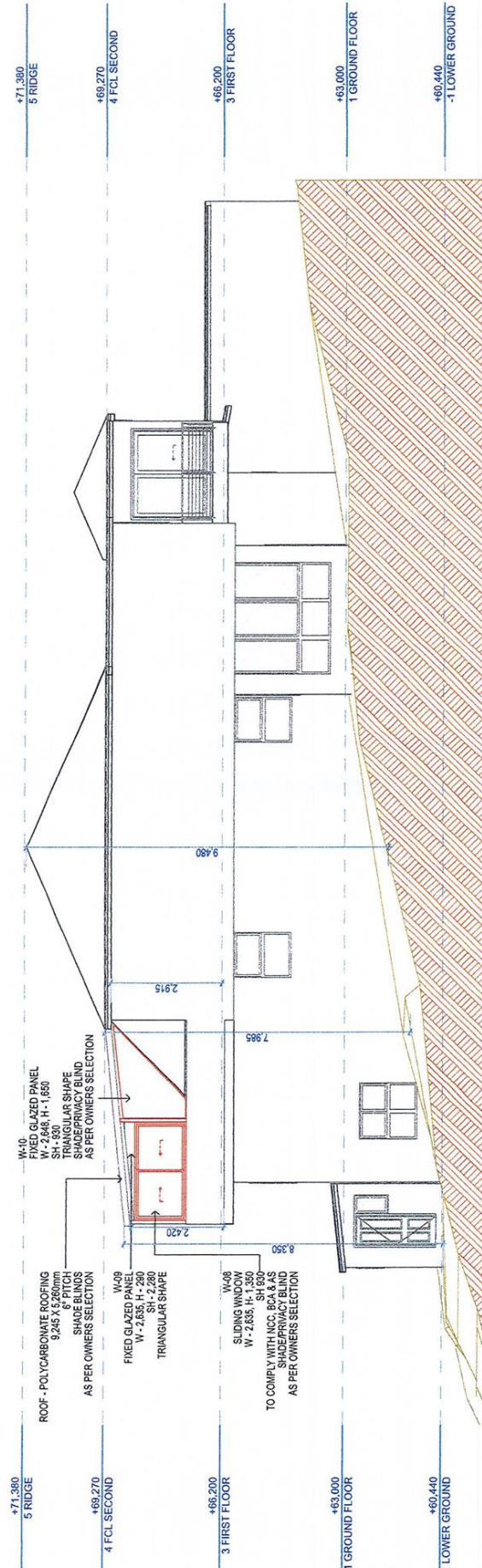
Raw Concept Designs
ABN 4078783415
P 0416 184 188
E kal@rawconceptdesigns.com.au
W www.rawconceptdesigns.com.au

General Notes:
1. All drawings are subject to change without notice.
2. Not to be used for construction purposes without the approval of the Council.
3. Drawings that are not used for construction purposes will be issued for
4. Information only.
5. All boundaries and contours subject to survey.

NORTH / EAST ELEVATION 1:100
26/4/18
7

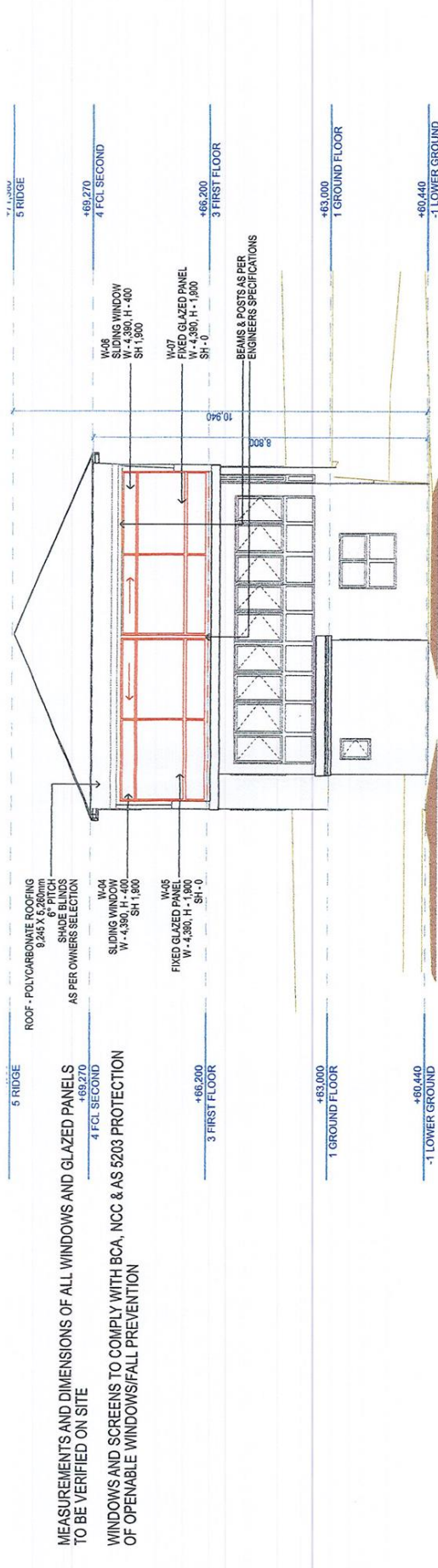


NORTH ELEVATION

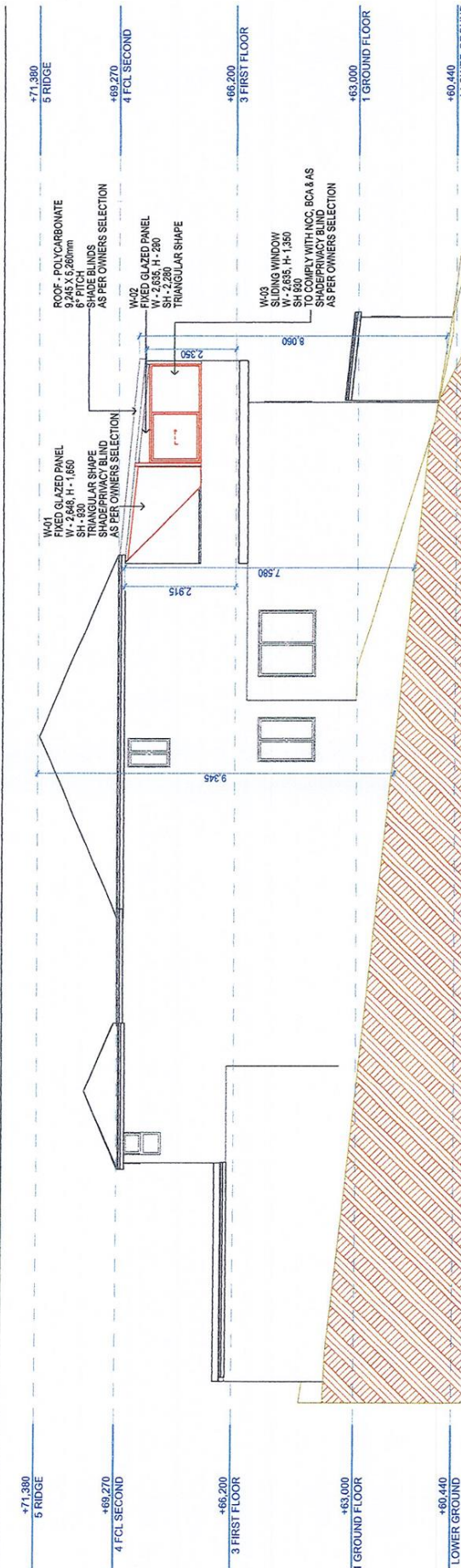


EAST ELEVATION

MEASUREMENTS AND DIMENSIONS OF ALL WINDOWS AND GLAZED PANELS
TO BE VERIFIED ON SITE
WINDOWS AND SCREENS TO COMPLY WITH BCA, NCC & AS 5203 PROTECTION
OF OPENABLE WINDOWS/FALL PREVENTION



SOUTH ELEVATION



WEST ELEVATION



Raw Concept Designs

Clontarf Additions
Nora and Malcolm Hunt
27 Alma Street Clontarf NSW 2033
P 0408 448 510
E malcolmhunt@bigpond.com

Raw Concept Designs
ABN 4087817815
P 0416 184 188
E kathy@rawconceptdesigns.com.au
W www.rawconceptdesigns.com.au

General Notes
The Builder shall check all dimensions and levels on this plan to construction.
Notify any errors, discrepancies or omissions to the Designer.
Contractors shall not be used for construction purposes until issued for completion.
Do not scale drawings.
All boundaries and contours subject to survey.

SOUTH / WEST ELEVATION
1:100
26/4/18
8

ITEM 3.5	DA2018/0046 - 36 MALVERN AVENUE, MANLY - ALTERATIONS AND ADDITIONS TO THE EXISTING BUILDING
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2018/516845
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/0046 for Alterations and additions to the existing building on land at Lot B1 DP 433559, 36 Malvern Avenue, Manly, subject to the conditions outlined in the Assessment Report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 22 August 2018

36 Malvern Avenue Manly - Alterations and additions to the existing building

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0046
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot B1 DP 433559, 36 Malvern Avenue MANLY NSW 2095
Proposed Development:	Alterations and additions to the existing building
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	Craig Andrew Shortus
Applicant:	Craig Andrew Shortus
Application lodged:	16/01/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	12/07/2018 to 30/07/2018
Advertised:	Not Advertised
Submissions Received:	6
Recommendation:	Approval
Estimated Cost of Works:	\$ 100,000.00

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)
DA2018/0046 Page 1 of 29



taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.1 Streetscapes and Townscapes

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 5.5 Road Widening and Realignment

SITE DESCRIPTION

Property Description:	Lot B1 DP 433559 , 36 Malvern Avenue MANLY NSW 2095
Detailed Site Description:	<p>The subject property is commonly known as 36 Malvern Avenue, Manly and legally known as Lot B1 DP433559. The site is located on the eastern side of Malvern Avenue and has rear access at Pine Lane. The property is rectangular in shape and has a frontage of 6.095m to Malvern Avenue, an average depth of 45.72m and an overall site area of 278.7m². The property currently contains a one and two storey dwelling with vehicular access via an existing driveway from Pine Lane to an existing garage to the rear of the existing dwelling. The property has a slight slope from the front to the rear of the property, being approximately 0.3m.</p> <p>A variety of low and medium density development along Malvern Avenue being predominantly 1, 2 or 3 storey dwellings but also higher density residential development including 33 Malvern Avenue (directly opposite the subject site) and residential flat buildings to the east at North Steyne.</p> <p>The subject site is within close vicinity of the beach and ocean foreshore, sharing a rear lane with North Steyne which is adjacent to the beach.</p>

Map:



SITE HISTORY

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

- DA124/93- BA135/93- 1st Floor additions.
- DA434/2001- Installation of In-Ground Swimming Pool within rear setback.
- DA130/2010 (including Section 96) for alterations and additions to the existing dwelling
- DA267/2010- Alterations and additions including basement storeroom approved by DAU.
- DA340/2016- Alterations and additions to the existing semi detached dwelling approved by DDP on 16 August 2017.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for a studio level above the existing garage to the rear of the property at Pine Lane. The studio would include a rumpus area and a bathroom.

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	Manly Development Control Plan applies to this proposal.

DA2018/0046

Page 3 of 29



Section 79C 'Matters for Consideration'	Comments
development control plan	
Section 79C (1) (a)(iia) – 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 of 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> <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 of 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	<p>(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.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the</p>



Section 79C 'Matters for Consideration'	Comments
	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 “Notification & Submissions Received” 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

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 6 submission/s from:

Name:	Address:
Withheld	MANLY NSW 2095
Mr Jeremy John Knibbs	1 / 149 Pittwater Road MANLY NSW 2095
Mr Glenn Reginald Hammond	34 Malvern Avenue MANLY NSW 2095
Mr Mark Andrew Bushell Eaglemont Planning	32 Malvern Avenue MANLY NSW 2095
Withheld	MANLY NSW 2095
Mr Robert Joseph McNair Mrs Jennette Rhonda McNair	30 Malvern Avenue MANLY NSW 2095

The following issues were raised in the submissions and each have been addressed below:

- Non-compliance with FSR development standard
- Does not meet DCP setbacks requirements for Pine Lane.
- Overshadowing
- Privacy issues to rear living areas of adjacent dwellings
- Loss of ocean views
- Inconsistent with streetscape
- Refusal of similar proposals in the street
- Overdevelopment/ undesirable precedent
- Potential use as a secondary dwelling/ increase in residential density and impact on street parking

DA2018/0046

Page 5 of 29



The matters raised within the submissions are addressed as follows:

- Non-compliance with FSR development standard
Comment:
A clause 4.6 application has been provided which has been considered to be well founded and the proposal meets the requirements of Clause 4.4 of the Manly LEP as outlined under the discussion for Clause 4.6 in this report. This issues does not therefore warrant refusal of the application.
- Does not meet DCP setbacks requirements for Pine Lane.
Comment:
As the proposal is for a studio above the existing garage, there is no further encroachment on the land required for road widening and this is consistent with the requirements of clause 5.5 of the Manly DCP 2013. This issues does not therefore warrant refusal of the application.
- Overshadowing
Comment:
The proposed studio is compliant with the controls for overshadowing as a result of the modulation provided by the setbacks from the ground floor garage walls. This issues does not therefore warrant refusal of the application.
- Privacy issues to rear living areas of adjacent dwellings
Comment:
There are no proposed windows at average eye level facing the private open space of adjoining properties. Along with the physical separation from adjoining living areas, this provides a reasonable circumstance for privacy. This issues does not therefore warrant refusal of the application.
- Loss of ocean views
Comment:
In accordance with the view loss principle established by the NSW Land and Environment Court, the proposal provides a negligible to minor impact on views. This is partly as a result of the water views being from a bedroom and being partial as a result of existing vegetation. This issues does not therefore warrant refusal of the application.
- Inconsistent with streetscape
Comment:
The proposal provides a reasonable outcome when the bulk and presentation of both sides of the street is considered. As further discussed under the sections for streetscapes and setbacks below, the proposal provides a reasonable visual outcome despite not being the predominant form on the same side of the street. This issues does not therefore warrant refusal of the application.
- Overdevelopment/ undesirable precedent
Comment:
An merit assessment of the standards and controls below has found the extent of the development and design in this circumstance to be reasonable. This issues does not therefore warrant refusal of the application.



warrant refusal of the application.

- Potential use as a secondary dwelling/ increase in residential density and impact on street parking
Comment:
A condition has been imposed to ensure the studio is not used as a secondary dwelling and as such there will be no increase to dwelling density or associated impact on parking. This issues does not therefore warrant refusal of the application.

MEDIATION

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

REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.

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

Principal Development Standards

DAZ018/0046				Page 7 of 29
-------------	--	--	--	--------------



Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	6.16m	N/A	Yes
Floor Space Ratio Site area: 278.7m ²	FSR: 0.75:1 (209.025m ²)	FSR: 0.86:1 (236m ²) Approved under DA340/2017: 216m ²	12.9%	No, see comments.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Requirement:	0.75:1 (209.025m ²)
Proposed:	0.86:1 (236m ²)
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	12.9%

The proposal must satisfy the objectives of 4.4 Floor Space Ratios, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Floor space ratio limitation pursuant to Clause 4.4 of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:



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

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

Comment:

The proposed extension to the rear garage would result in a second storey feature in Pine Lane above the existing garage. The existing streetscape predominantly has single storey garages on this side of the lane with one example of a second storey at 44 Malvern Avenue. The opposite side of the lane has a mix of higher density development as the height of building development standard is 13m for this side of the lane. As a result of this mix of bulk in the lane, the proposed minimisation in bulk through a compliant building height and the setbacks of the studio from the existing ground floor walls of the garage, the proposal will provide a bulk and scale that is consistent with the existing and desirable streetscape character.

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

Comment:

The proposed addition will provide side setbacks that will adequately control building bulk and density to ensure obscurement of landscape and townscape features as well as the beach is not unreasonable. In particular this includes the compliant setback of 1.7m to the top level of the studio at the northern setback as this is a location in which there are views available through to the beach from the dwelling to the north.

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

Comment:

The proposed studio would be built on top of the existing garage and this location would be appropriate in the area as it would complement the varied bulk within the lane (being garages and higher density development across the lane) and would not take the place of any existing landscaped area. In addition, the proposed setback of the top level from the ground floor walls would ensure that the development maintains an appropriate modulation of the development provide an appropriate visual presentation in the lane.

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

Comment:

As a result of the compliant height and modulation of the proposed studio, the proposed design will ensure environmental impacts are reasonably minimised. In addition, there are no eye level windows provided at the western elevation so that privacy impact is minimised by ensuring there is not unreasonable overlooking into the private open space of the neighbouring properties.



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

Comment:

Not applicable.

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 R3 Medium Density Residential zone.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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:

In this circumstance, providing flexibility to the floor space ratio development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the street context.

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

Comment:

It is appropriate to allow flexibility in this circumstance as an addition of floor space can be made to the dwelling without having any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and the varied nature of the surroundings.

(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:

The applicant provided written request that involved the following justification:

"• The floor space proposed is consistent with that reasonably anticipated in an R3 Medium Density Residential zone with the form, massing and density of the proposal complimentary and compatible with that established by other residential development within the R3 Medium Density Residential zone and within the sites visual catchment.

• The additions maintaining a contextually appropriate relationship with adjoining development and given the topography of the land and available view corridors will not give rise to any public or private view affectation.

• The additional floor space will not require the removal of any existing trees or vegetation with the established landscape regime maintained.

• The accompanying shadow diagrams demonstrate that a reasonable area of east facing living room fenestration and adjacent rear private open space area will receive 2 hours of solar access between 9am and 12pm on 21st June with a further 2 hours of solar access maintained to the street facing verandah and adjacent courtyard area of the southern adjoining property.

• In relation to privacy we note that all windows have been orientated to the front and rear of the site to maintain appropriate privacy between properties.

• Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its gross floor area, height or massing offensive, jarring or unsympathetic in a streetscape context (Pine Lane) having regard to the built form characteristics of laneway development within the sites visual catchment.

Accordingly it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from foreshore areas, public domain and surrounding properties.

• Having regard to the matter of Veloshin v Randwick City Council [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design."

(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 applicants 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 R3 Medium Density Residential zone in the MLEP 2013.

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

Comment:

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to the development standards under environmental planning instruments that adopt Clause 4.6 of the standard instrument where the variation to a numerical standard is no greater than 10%. In this case there is a variation of greater than 10% (to FSR). However, following advice from the Department of Planning and Environment, single dwellings with a variation of more than 10% for floor space ratio or building height may be determined by a delegate of Council. As such, the proposal has been referred to the Development Determination Panel for determination.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 278.7m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 6.5m	4.56m	N/A	Yes
	South: 6.5m	4.56m	N/A	Yes
4.1.2.2 Number of Storeys	3	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.25m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	Side setbacks: 1.52m (based on wall height)	0.9m (south) 0.985m-1.7m (north)	N/A	No, see comments.
4.1.4.4 Rear Setback	8m	0.72m	N/A	No, see comments.

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes

DA2018/0046

Page 12 of 29



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
5.5 Road Widening and Realignment	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance

The proposal is non-compliant with the rear setback control.

Merit consideration:

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

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

Comment:

The proposal does not involve any new wall, fence or car parking at the frontage.

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

Comment:

The proposed addition to the dwelling is above the existing garage which has a setback of 0.72m to rear lane. This setback is consistent with the rear setback of the majority of garages on this side of the street in close vicinity. As a result of the reasonable minimisation of bulk provided by the studio through setbacks from the ground floor garage, the proposal will be complementary with the identified streetscape. In particular, the street is on the border of a height zone under the Manly LEP and the proposed studio which is compliant with the height in both zones will complement the varied heights in the street.

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

Comment:

Not applicable.

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



with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

The proposal for a studio above the existing garage involves new windows including to the east, west and south elevation. The side elevation windows and west elevation (which faces neighbouring private open space) are high level glazing and one high level opaque window. As such, the proposed development would ensure the new floor area would not cause any unreasonable potential for viewing between the studio and adjoining private open space.

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

Comment:

The proposal will provides a design with reasonable sizes for openings and adequate modulation to ensure an adequate compromise between access to light and air with privacy.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal provides a window to Pine Lane that provide adequate opportunity for awareness of neighbourhood security.

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

3.4.3 Maintenance of Views

Merit consideration:

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

Objective 1) To provide for view sharing for both existing and proposed development and existing and



future Manly residents.

Comment:

The proposal provides for a studio level above the existing garage that provides access to views for the subject site whilst also maintaining a reasonable corridor of views for the northern neighbour through a setback that is compliant at the top level of the studio. The proposal also provides views to be consistent with the views principle established by the NSW Land and Environment Court.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

An assessment of view loss has also been undertaken for the adjoining property to the north with reference to the Views Principle established by the NSW Land and Environment Court as follows:

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example 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, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The northern neighbour has views toward the beach and ocean including a land-water interface. These are made partial by vegetation on site as well as vegetation in the form of pine trees at the beachfront. The view is also restricted by the unit buildings to the north and south to have the effect of providing a view corridor (see photo below).



Photo 1: Taken from standing positions at upper level bedroom window.

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:

The views are obtained from a bedroom window at the upper level of the northern neighbour. The view is obtained to the rear but the majority of the view is over the side boundary as a result of the obscurement provided by the unit building to the north and the vegetation on site. The view can currently be retained from sitting and standing position but retention of the sitting position view is more unrealistic in this situation. This is as a result of the partial nature of the view and the lower value placed on the view in accordance with the principle in relation to views from a bedroom and over a side boundary.

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 percent 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:

The retention of a view corridor to the ocean at an average eye level along with the view loss being from a bedroom window and over a side boundary, provides a situation in which the extent of impact for the whole property is negligible to minor.

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:

As a result of the complying setback at the top of the northern elevation (being 1.7m) and the negligible impact caused by the non-complying section of the setback at the lower part of the studios northern elevation, the part and extent of the proposal causing the impact is reasonable. Along with this reasonableness in relation to the planning control for setbacks, the non-compliance with floor space ratio is reasonable due to the overall negligible to minor view loss in accordance with the third step of the principle (above).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Comment:

The view corridor maintained by the setback to the northern part of the studio provides a situation in which access to views are maintained and view creep is adequately minimised.

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



proposal is supported, in this particular circumstance.

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

Description of non-compliance

The proposal is non-compliant with the control for side setbacks which is 1.52m. The proposed setbacks are 0.9m at the southern boundary and 0.985m-1.7m at the northern boundary.

Merit consideration:

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

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

Comment:

The existing streetscape has garages that are set close to the boundary on one side of the street and a mix of development including residential flat buildings on the opposite side of the street. The proposed studio above the existing garage would add to this mix of development in the street whilst also being setback from the ground floor wall of the garage to provide a modulation that provides desired spatial proportions in the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal provides a design that includes reasonable setbacks and a minimisation of window forms to ensure appropriate amenity for the area. The compliant setback to the top of the studio at the northern elevation also ensures that an appropriate view corridor is maintained for the neighbouring property.

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

Comment:

In this circumstance, the lack of unreasonable amenity impact and the adequate minimisation of bulk through modulation and setbacks, provides a siting for the proposed studio that is acceptable.

Objective 4) To enhance and maintain natural features by:

DA2018/0046

Page 18 of 29



- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed studio is located on top of an existing garage has no impact on vegetation or any natural features.

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

Comment:

Not applicable.

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

5.5 Road Widening and Realignment

The proposal is for a studio above the existing garage and as such does not provide any further encroachment on land required for road widening, consistent with Clause 5.5 of the Manly DCP.

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;

DA2018/0046

Page 19 of 29



- 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 Development Consent to DA2018/0046 for Alterations and additions to the existing building on land at Lot B1 DP 433559, 36 Malvern Avenue, MANLY, 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
DA02- Site Plan- Issue L	11.07.18	Watershed Design
DA03- Ground Floor Plan Garage- Issue L	11.07.18	Watershed Design
DA04- Upper Floor Plan Studio- Issue L	11.07.18	Watershed Design
DA05- Sections- Issue L	11.07.18	Watershed Design
DA06- Elevations- Issue L	11.07.18	Watershed Design

Engineering Plans		
Drawing No.	Dated	Prepared By
DA11- Erosion and Sediment Control Plan	19.12.2017	Watershed Design

DA2018/0046

Page 20 of 29



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

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. 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)

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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.

DA2018/0046

Page 22 of 29



- (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

4. Security Bond

A bond (determined from cost of works) of \$1,500 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

5. Waste Management Plan

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

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

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

6. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK



7. **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.

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

8. **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.

Note: The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

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

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

9. **Single dwelling house (no approval for Secondary dwelling)**

The premises/site is to be used solely as a single dwelling house and not at any time for separate occupation, without the prior consent of Council.

Reason: To ensure the premises is occupied in compliance with the consent. (DACPLGOG1)

NOTE
ALL NEW DOWNPIPES TO CONNECT
TO EXISTING STORMWATER SYSTEM

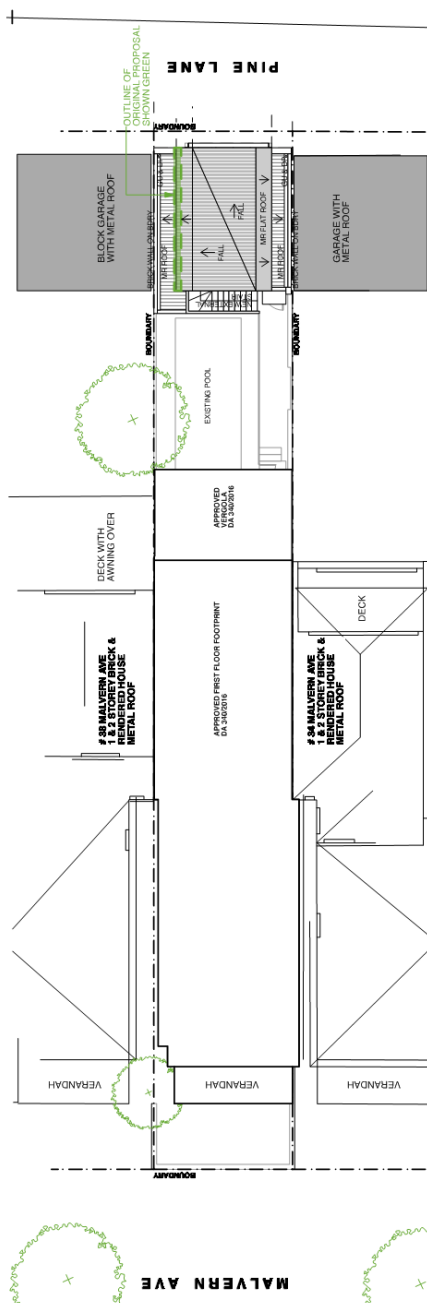
AREA CALCULATIONS

EXISTING GARAGE 34sqm

PROPOSED GARAGE & RUMPUS 55sqm (34sqm garage + 21sqm rumpus)

DA AMENDMENTS - ISSUE L

1. NORTH WALL RAKED TO INCREASE SIDE SETBACK OF 1.7m
PROPOSAL NOW COMPLIES WITH SIDE ENVELOPE
CONTROL ON NORTH SIDE.
2. FLOOR AREA REDUCED.



NOTES

- 1. Any discrepancies to be brought to the Architect's attention.
- 2. All dimensions are to be taken from the face of the wall unless otherwise specified.
- 3. All dimensions are to be taken from the face of the wall unless otherwise specified.
- 4. The drawings are to be used for the purpose of obtaining a Development Application only and are not to be used for any other purpose.
- 5. The drawings are to be used for the purpose of obtaining a Development Application only and are not to be used for any other purpose.
- 6. The drawings are to be used for the purpose of obtaining a Development Application only and are not to be used for any other purpose.
- 7. The drawings are to be used for the purpose of obtaining a Development Application only and are not to be used for any other purpose.
- 8. The drawings are to be used for the purpose of obtaining a Development Application only and are not to be used for any other purpose.
- 9. The drawings are to be used for the purpose of obtaining a Development Application only and are not to be used for any other purpose.
- 10. The drawings are to be used for the purpose of obtaining a Development Application only and are not to be used for any other purpose.

NO	REVISIONS	DATE
1	ISSUED FOR REVIEW	15.05.18
2	ISSUED FOR REVIEW	22.05.18
3	ISSUED FOR REVIEW	23.05.18
4	ISSUED FOR REVIEW	04.07.18
5	ISSUED FOR REVIEW	11.07.18

WATERSHED
DESIGN
interiors
landscapes
Phone: 02 9977 1076 Fax: 02 9976 0625 info@watersheddesign.com.au

CLIENT
Craig Shortus &
Kathy Ostin

PROJECT
Alterations & Additions
to Existing Garage

ADDRESS
36 Malvern Ave, Manly

TITLE
Site Plan

JOB NO
16003

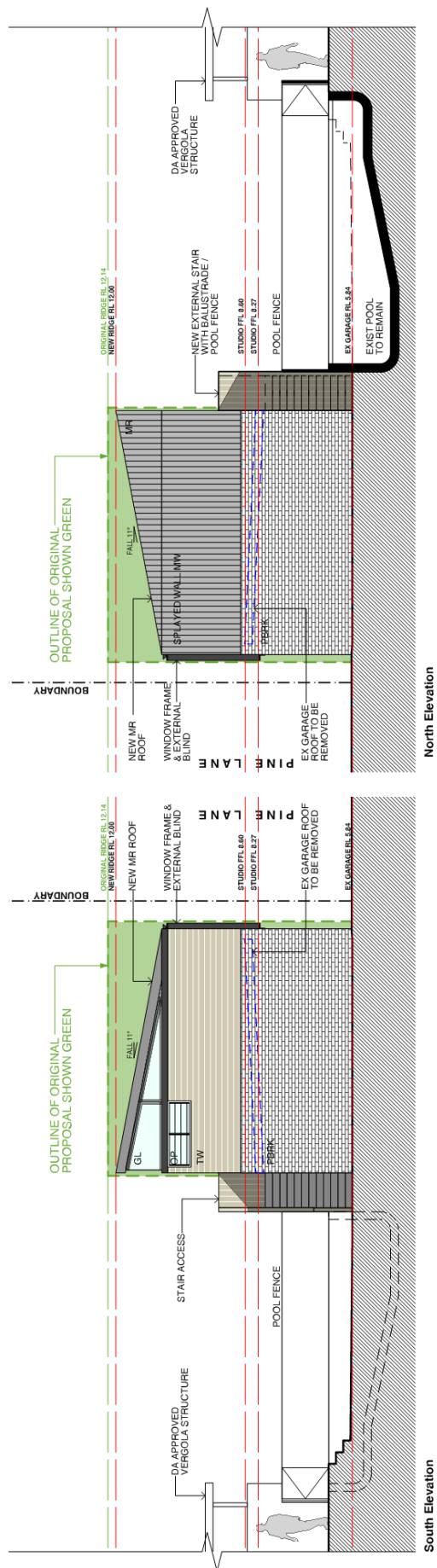
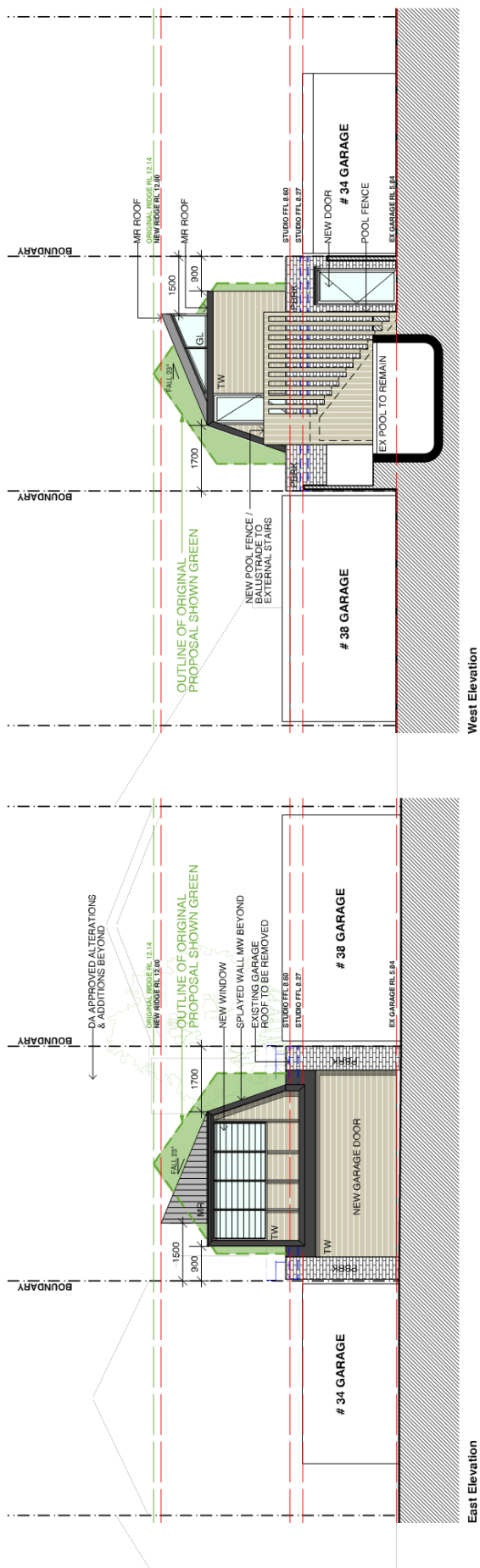
DRAWN
NT

CHECKED
MK

SCALE
1:200

DRAWING NO
DA02

ISSUE
L



CLIENT	Craig Shortus & Kathy Ostlin	ADDRESS	36 Malvern Ave., Manly	JOB NO	16003	DRAWING NO	DA06
PROJECT	Alterations & Additions to Existing Garage	TITLE	Elevations	DRAWN	NT	ISSUE	L
				CHECKED	MK		
				SCALE	1:100		

[illegible]