

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 on

WEDNESDAY 26 SEPTEMBER 2018



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 26 September 2018
in the Walamai Room, Civic Centre, Dee Why**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 12 September 2018	
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS	5
3.1	DA2018/0852 - 12 Moore Street, Clontarf - Alterations and additions to the existing dwelling house	5
3.2	DA2018/0764 - 98 Cutler Road, Clontarf - Alterations and additions to the existing dwelling house	45
3.3	DA2018/0696 - 58 Greycliffe Street, Queenscliff - Demolition Works and Construction of new dwelling house with swimming pool and a secondary dwelling	91
3.4	DA2018/0894 - 157 Victor Road, Dee Why - Alterations and additions to a dwelling house	138
3.5	DA2018/0570 - 10 Mountview Place, Bilgola Plateau - Construction of a new dwelling house including the retention of a substantial portion of the existing dwelling house	169
3.6	DA2018/1018 - 52 Peronne Avenue, Clontarf - Demolition work and construction of a dwelling house	221

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 12 SEPTEMBER 2018

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 12 September 2018 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2018/0852 - 12 MOORE STREET, CLONTARF - ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING HOUSE
REPORTING MANAGER	RODNEY PIGGOTT
TRIM FILE REF	2018/603863
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.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/0852 for alterations and additions to the existing dwelling house on land at Lot 24 Sec C DP 2610, 12 Moore Street, Clontarf, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0852
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 24 DP 2610, 12 Moore Street CLONTARF NSW 2093
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:	Michael Craig Jonson Heidi Dunbar Jonson
Applicant:	Raise The Roof
Application lodged:	24/05/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/05/2018 to 14/06/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 625,000.00

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) 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

DA2018/0852

Page 1 of 32



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 Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.3.1 Landscaping Design
 Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
 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
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 24 DP 2610 , 12 Moore Street CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern side of Moore Street.</p> <p>The site is regular in shape with a frontage of 12.215m along Moore Street and a depth of 42.67m. The site has a surveyed area of 521.3m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing two-storey detached dwelling.</p> <p>The site slopes 5.7m from rear (north) to front (south).</p> <p>The site contains several small garden beds and planted vegetation. No significant trees are located on the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwellings.</p>

Map:





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	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 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</p>



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

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 Tamara-Ann Williams	15 Alma Street CLONTARF NSW 2093

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

- Bulk and scale
DA2018/0852



- View loss impacts
- Privacy impacts

The matters raised within the submissions are addressed as follows:

- Bulk and scale
Comment:
The proposed dwelling is not of unreasonable bulk or scale, particularly as viewed from the rear from No. 15 Alma Street. The substantial front, side and rear setbacks to the proposed first floor addition successfully minimise the bulk of the development. A full assessment of the proposed FSR non-compliant is completed under Clause 4.6.
- View loss impacts
Comment:
The proposal will result in only a minor amount of view loss from the western side of the rear deck of No. 15 Alma Street. A full view loss assessment against the objectives of the Manly DCP and the NSW LEC planning principle is completed under Part 3 General Principles of Development.
- Privacy impacts
Comment:
The proposal will result in negligible privacy impact between the subject site and No. 15 Alma Street. The proposed first floor addition contains only one window to the northern elevation, which is a highlight window to a walk in robe.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p><u>Planning Comments:</u></p> <p>Due to the age of the application on receipt of the initial referral comments received, Council's Development Engineer was requested to provide suitable conditions to satisfy the OSD requirements. The Engineer provided further comments and relevant conditions as included in the consent.</p> <p><u>Further Engineering Referral Comment:</u></p> <p>Irrespective of the lack of OSD details, submitted to Council in the DA, a Stormwater Drainage Application is to be submitted prior CC to ensure the OSD will be designed in accordance with Council's Manly Specification for on site stormwater Management 2003. An additional condition is placed to address the requirement.</p>

DA2018/0852

Page 6 of 32



Internal Referral Body	Comments
	<p>And the applicant must be advised that a modification application may need to be lodged, if there are significant changes to the approved design due to the installation of the OSD.</p> <p>In this regards, Development Engineer has no objection to the application subject to the following conditions of consent.</p> <p><u>Engineering Referral comment:</u></p> <p>The total impervious areas of the site is over 60% of the total site area.</p> <p>As such, an on site stormwater detention system (OSD) shall be required in accordance with Council's Manly Specification for on site stormwater Management 2003.</p> <p>However, the applicant has not provided any stormwater design or detail in this DA submission.</p> <p>The application does not comply with the section 3.7 of Manly DCP 2013.</p> <p>Development Engineer cannot support the application without OSD design information.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>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.</p>

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)

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated

DA2018/0852

Page 7 of 32



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

Manly Local Environmental Plan 2013

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	8.48m	N/A	Yes
Floor Space Ratio	0.4:1 208.52m ²	0.54:1 280.8m ²	34.7%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

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

Requirement:	0.4:1 (208.52m ²)
Proposed:	0.54:1 (280.8m 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	34.7%



The proposal must satisfy the objectives of 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 not of unreasonable bulk or scale, the first floor is set back significantly from the front property boundary and the proposed building height is compliant. The subject site is located at the end of an access road off Moore Street, resulting in further separation from the street frontage and minimal visual impact on the streetscape.

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

Comment:

The proposed building bulk is minimised through the modulation of the first floor addition and the new low-profile roof form, ensuring that no important landscape or townscape features are unreasonably obscured. The proposed ground floor addition has been amended in order to minimise view loss impacts to Chinamans Beach at Balmoral.

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

Comment:

The proposed development is three storeys but is compliant with the maximum building height, thus allowing greater gross floor area to be achieved without the addition of unreasonable bulk. Despite the extent of the proposed FSR variation, the presentation of the development to the streetscape as a three-storey dwelling is consistent with the existing character and predominant building form on the northern side of Moore Street.

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

Comment:

DA2018/0852

Page 9 of 32



The proposed flat roof form and substantial front, side and rear setbacks sufficiently minimise adverse impacts on the use of 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:

N/A

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 <insert zone> 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 retains the existing low density residential use.

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:

N/A

It is considered that this objective is not relevant to the development.

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 proposal is assessed as being consistent with all relevant Manly LEP and DCP objectives and as such, flexibility in applying this standard will result in no unreasonable amenity impacts on the adjoining properties and surrounding area.

DA2018/0852

Page 10 of 32



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

Comment:

The subject site is classified as an Undersized Lot under Clause 4.1.3.1 of the Manly DCP. The maximum allowable gross floor area calculated in accordance with this provision is 300m², which would result in the proposed FSR being compliant. Furthermore, the subject site is located within the R2 Low Density Residential Zone and allowing flexibility in this circumstance would allow development consistent with that of the surrounding area, as demonstrated by the below analysis of approved gross floor area's within Moore Street:

10 Moore Street - 255.9m² (0.49:1)
13 Moore Street - 273m² (0.37:1 approx.)
15 Moore Street - 332m² (0.67:1)
26 Moore Street - 357m² (0.688:1)
30 Moore Street - 308m² (0.59:1 approx.)

(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's written request provides the following justification:

"The proposed first floor addition reflects the existing bulk and scale of neighbouring residences. The stepped nature of the proposed addition mimics those houses in the area that are navigating the sloping blocks in order to keep the desired streetscape character. Roof bulk has been minimised through the use of skillion roofs and parapets, glass balconies and large glass picture windows. This development is consistent with the existing and desired streetscape character.

The buildings density and bulk in relation to site area has negotiated the landscape features so as not to obscure the landscape features and views. The first floor and entry stair well have been stepped back to enable neighbouring houses to access views of Balmoral Beach.

The objective of the design is to maintain the visual relationship between the existing character of residences found in the area and landscape. The diminishing of roof bulk whilst stepping the house into the site helps to accomplish this relationship.

The first floor addition has minimised adverse environmental impacts. This has been achieved through the use of skillion roofs and avoiding the bulk of a traditional roof that would deny solar



access to neighbouring properties. The stepped nature of the design allows view sharing to the public domain. The environmental impacts have shown through shadow diagrams and roof heights that the solar access has not been impacted and views have not been interrupted.

It is requested to grant approval for the first floor addition at 12 Moore Street Clontarf, though the development standard set out in the Manly LEP clause 4.4 that governs the Floor Space Ratio has been contravened. Though not holding to the FSR standard set at 0.4:1 the objectives of clause 4.4 have been met. Through using these objectives to govern the design, the FSR has increased. The site area of 521.3msq has caused the design to be constrained. Compliance with this development standard is unreasonable in this circumstance.

Sufficient Environmental planning grounds have shown that the development is justified in contravening the development standard. The average lot size in the Clontarf area is 750msq. The site area of 12 Moore Street is 521.3msq and the proposed development has an FSR of 0.53:1. The development standard is limiting the design and it is requested that Council consider this justification in contravening the development standard."

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

(a) the consent authority is satisfied that:

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

Comment:

The applicant's written request to vary the development standard adequately addresses 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 Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. Following the release of PS 18-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for 12 months from 1 March 2018, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary a development standard by more than 10%.

As the application seeks to vary the development standard by more than 10% the



concurrence of the Secretary is assumed subject to determination by Council's Development Determination Panel.

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

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

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

No significant earthworks are proposed in the application.

6.2 Earthworks

No significant earthworks are proposed in the application.

6.9 Foreshore scenic protection area

The proposed first floor addition is compliant with the 8.5m height limit and is sufficiently set back to minimise the overall bulk of the dwelling. As such, the proposal will result in no unreasonable impact on visual aesthetic amenity or views to and from Sydney Harbour.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 521.3m ²	Requirement	Proposed	Complies
4.1.2.1 Wall Height	Western: 7.1m	Dining: 5.1m	Yes
		Deck 2: 6.7m	Yes
		Bed 2 / stair: 7.8m	No
	Eastern: 7.2m	GF Void: 5.3m	Yes
		Deck 2: 6.9m	Yes
		Rumpus: 6.9m	Yes
4.1.2.2 Number of Storeys	2	3	No
4.1.2.3 Roof Height	Height: 2.5m	0.56m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	10.691	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	West - Dining: 1.7m	1.6m	Existing
	West - Deck 2: 2.23m	2.892m	Yes

DA2018/0852

Page 13 of 32



	West - Bed 2 / stair: 2.6m	2.892m	Yes
	East: GF Void: 1.77m	1.55m	No
	East - Deck 2: 2.3m	2.362m	Yes
	East: Rumpus: 2.3m	2.362m	Yes
4.1.4.4 Rear Setbacks	8m	GF: 6.469m FF: 10.03m	Existing Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area 312.78m ²	41.2% 214.8m ²	No
	Open space above ground 25% of total open space 51m ²	30% 65m ²	No
4.1.5.2 Landscaped Area	Landscaped area 40% of open space 85.92m ²	43% 92.4m ²	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	> 18m ²	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m 6.1m	6.57m	Existing
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	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
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment



3.3.1 Landscaping Design

The proposal includes only a minor reduction to landscaped area at the front of the dwelling, and will result in no unreasonable impact to existing vegetation or important landscape features on the site. It is noted that a previous approval (DA0137/2017) includes vegetation planting and a reduction to landscaped area within the rear yard). However, no changes to landscaping within the rear setback are included in this application.

3.3.2 Preservation of Trees or Bushland Vegetation

No trees or vegetation are proposed to be removed as part of this application.

3.4.1 Sunlight Access and Overshadowing

Merit consideration:

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

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

Comment:

The proposal will result in no unreasonable overshadowing of the subject site or surrounding properties. At 9am there is additional overshadowing within the front setback of No. 16 Moore Street and minor additional overshadowing to the front of No. 14 Moore Street. At 12pm the only additional shadowing is a minor area within the front setback of the subject site. At 3pm there is minor additional overshadowing of No. 10 Moore Street both within the front setback and partial shadowing of a highlight window to a walk in robe. There will also be additional overshadowing of the garage within the front setback at No. 8 Moore Street, with sunlight access to the adjacent swimming pool area being largely retained.

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:

The proposal maintains adequate sunlight access to the private open spaces and windows of the development site and adjoining and surrounding properties. The additional overshadowing caused by the proposed additions is within the front setback areas of the neighbouring properties and generally avoids any additional impact to private open space areas.

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 proposed first floor addition is appropriately sited with sufficient setbacks to minimise additional overshadowing impacts.

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:

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

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

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

Comment:

The proposal, as conditioned, will result in no unreasonable privacy impacts to the subject site or adjoining properties. The proposed extended ground floor Deck 1 is conditioned to be provided with an obscured/translucent glass balustrade to the western elevation to minimise potential downward overlooking of the adjoining property. The proposed Deck 1 extension follows the setback of the existing deck and the southern orientation of the deck is retained. As such, requiring the proposed glass balustrade to be obscured is considered sufficient to minimise any unreasonable privacy/overlooking impacts. The proposed setbacks to the first floor windows W5, W6 and W7 are such that the roof line below will prevent any unreasonable downward overlooking and any view lines will be generally over the roof of the adjoining property. Additionally, these windows are to bedrooms and a walk-in robe rather than living areas. Window W8 is to a staircase and will not result in any unreasonable privacy impact. The proposed first floor Deck 2 is provided with full-height sliding timber privacy screens for a length of approximately 3.5m along western elevation. The inclusion of these screens ensures that the primary orientation of the deck is to the south towards the harbour, rather than to the west towards the adjoining property. Further, Deck 2 is located off a rumpus room and is set back approximately 2.9m from the side boundary.

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 and conditioned privacy measures are also considered to maintain harbour views from the existing/proposed windows and private open spaces, while providing a reasonable level of privacy and sunlight access to the subject site and adjoining and surrounding properties.



Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal provides additional opportunities for passive surveillance.

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, as amended, ensures reasonable view sharing for the subject dwelling and surrounding properties.

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 over/through the subject site are currently available from No. 10 Moore Street and Nos. 13 and 15 Alma Street. The available views are water views over Middle Harbour and interface between land and water at Balmoral, including Chinamans Beach and Balmoral Beach. The views available from No. 10 Moore Street are whole views. Views available from No. 15 Alma Street include whole and partial views, and those from No. 13 Alma Street are partial views. See the attached document for related photographs where referred to in the below assessment.

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



Comment:

Views from No. 10 Moore Street are gained across a side boundary from the middle-level dining/living room and balcony, and upper level terrace accessed from the master bedroom, as shown in **Figures 1-7**.

Views from No. 15 Alma Street are gained across a rear boundary from the ground floor kitchen, dining/living room and rear balcony, as shown in **Figures 8-11**.

Views from No. 13 Alma Street are gained across a side and rear boundary from the ground floor master bedroom, ensuite and rear balcony, as shown in **Figure 12**.

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 affected views from No. 10 Moore Street is gained from a sitting and standing position from the middle-level dining/living room as shown in **Figures 1-3**, and from the upper level terrace as shown in **Figures 4-7**. A minor view area through the western window of the ground floor dining room, shown in **Figure 3**, will be lost while the majority of this view including Chinamans Beach will be retained. The primary view area to the south from the dining/living room and balcony, shown in **Figures 1 & 2** will remain unaffected. A water view over the Spit Bridge and Chatswood to the west from the upper level terrace, as shown in **Figure 7** will also likely be lost. However, the primary view from this terrace towards the south-east, south and south-west will remain unaffected. The unaffected views shown in **Figures 4-6** include South Head, Middle Head, Balmoral Beach and Chinamans Beach.

The affected view from No. 15 Alma Street is gained from the dining room and rear balcony. Views from this property to Balmoral Beach are partially obscured by the large tree in the rear yard and the existing roof of the subject dwelling (**Figure 9**). A minor view area potentially lost from this property is limited to the eastern side of the rear balcony, shown in **Figure 10**. The substantial western side setback to the proposed first floor addition will allow the retention of views from the dining room and western side of the balcony, and views to the west to Chinamans Beach will remain unaffected.

The affected view from No. 13 Alma Street (**Figure 12**) is gained from the rear balcony accessed from the master bedroom. This view is obscured by the large tree in the rear yard of No. 15 Alma Street and the existing ground floor roof of the subject dwelling. The rear and western side setbacks to the proposed first floor addition will likely result in the retention of the majority of the existing partial view from No. 13 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 non-compliant in relation to FSR, western wall height, number of storeys, eastern setback and open space. Despite these non-compliances, the proposed building height is compliant and the proposed first floor addition is sufficiently modulated through substantial front, side and rear setbacks, while the flat roof design minimises the additional bulk of the dwelling. The compliant design elements successfully minimise the overall impact of the development and the proposed non-compliances result in minimal material impact on views from the surrounding properties. As such, the proposed view loss is assessed as minor and is acceptable.

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 is considered to be reasonable in relation to view loss and all other relevant provisions of the Manly DCP.

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.

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

Description of non-compliance

The proposed western Bedroom 2/stair wall and number of storeys is non-compliant.

Merit consideration:

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

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 proposed overall building height is compliant and the new flat roof minimises the height and bulk of the additions

b) to control the bulk and scale of buildings.

Comment:



The proposed first floor addition is not of unreasonable bulk or scale and the setbacks are sufficient to minimise the visual impact of the additional storey.

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 proposal will result in no unreasonable impact on views to, from and between residential development and public spaces. A full assessment of view loss is completed under Part 3 General Principles of Development.

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

Comment:

The proposed setbacks are adequate to ensure reasonable sunlight access is retained to the adjoining properties. A full assessment of sunlight access and overshadowing is completed under Part 3 General Principles of Development.

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:

N/A

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 proposed eastern side setback to the ground floor void is non-compliant.

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

DA2018/0852

Page 20 of 32



of the street, the street edge and the landscape character of the street.

Comment:

The proposed non-compliant wall is set back sufficiently from the street to minimise the impact on 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:

The proposed wall is to a staircase/void and will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions.

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

Comment:

The non-compliance is minor and the proposed wall element extends only 1m from the existing dwelling.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed non-compliance results in a negligible reduction to landscaped area.

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

Comment:

N/A

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.

4.1.5 Open Space and Landscaping

The existing total open space area is non-compliant and the proposal results in a minor reduction of only 2.5m². The proposed open space above ground is non-compliant. However, the proposed privacy measures, along with those required by conditions of consent, will provide sufficient privacy to the subject site and adjoining properties.

4.4.5 Earthworks (Excavation and Filling)

No significant earthworks are proposed in the application.

5.4.1 Foreshore Scenic Protection Area

The proposed first floor addition is compliant with the 8.5m height limit and is sufficiently set back to minimise the overall bulk of the dwelling. As such, the proposal will result in no unreasonable impact on visual aesthetic amenity or views to and from Sydney Harbour.

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 DA2018/0852 for Alterations and additions to the existing dwelling house on land at Lot 24 DP 2610, 12 Moore 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
1 Site Plan	Revision A, 5 September 2018	Raise the Roof
3 Proposed Lower Ground Floor Plan	Revision A, 5 September 2018	Raise the Roof
4 Proposed Ground Floor Plan	Revision A, 5 September 2018	Raise the Roof
5 Proposed First Floor Plan	Revision A, 5 September 2018	Raise the Roof
6 Elevations - South & North	Revision A, 5 September 2018	Raise the Roof
7 Elevations - West & East	Revision A, 5 September 2018	Raise the Roof
8 Section A-A	Revision A, 5 September 2018	Raise the Roof

Reports / Documentation – All recommendations and requirements contained within:

DA2018/0852

Page 23 of 32



Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Geotechnical Assessment	16 March 2018	White Geotechnical Group
BASIX Certificate No. A308049_09	12 March 2018	Jacaranda Trading International Pty Ltd

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.

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

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

DA2018/0852

Page 25 of 32



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

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

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

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

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

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

5. Stormwater Drainage Application

A Stormwater drainage application under Section 68 of the Local Government Act 1993 is to be submitted to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the On site stormwater detention system which are to be generally in accordance with Council's "Manly Specification for On -site Stormwater Managment 2003".

The form can be found on Council's website using the following link.
<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/stormwater-drainage-approval/4022-stormwater-drainage-approval.pdf>

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges.

DA2018/0852

Page 27 of 32



Council's Approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and Maintenance Stormwater management and compliance with the BASIX requirements, arising from the development.

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)

7. **Privacy Screens**

The glass balustrade to the proposed extended Deck 1 is to be obscured/translucent glass along the entire western elevation of the deck.

Plans demonstrating compliance with this condition are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain a reasonable level of privacy between the subject site and adjoining property to the west.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

8. **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.

9. **Maintenance of Sediment**

Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.

Reason: To ensure sediment controls are effective

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

10. **Authorisation of Legal Documentation Required for Onsite Detention**

The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final



Occupation Certificate.

Reason: To create encumbrances on the land.

11. **Registration of Encumbrances for On-site Stormwater Detention**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

12. **On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council.

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 stormwater disposal is constructed to Council's satisfaction. (DACENF10)

No. 10 Moore Street, Clontarf



Figure 1. View from ground floor living room to the south.



Figure 2. View from ground floor living room to the south-west.



Figure 3. View to be affected from dining area to the south-west.



Figure 4. View from first floor terrace to the south-east.



Figure 5. View from first floor terrace to the south.



Figure 6. View from first floor terrace to the south-west.



Figure 7. View to be affected from first floor terrace to the west.

No. 15 Alma Street, Clontarf



Figure 8. View from ground floor kitchen to the west.



Figure 9. View from ground floor balcony (eastern side) to the south-west.



Figure 10. View from ground floor (western side) to the south.

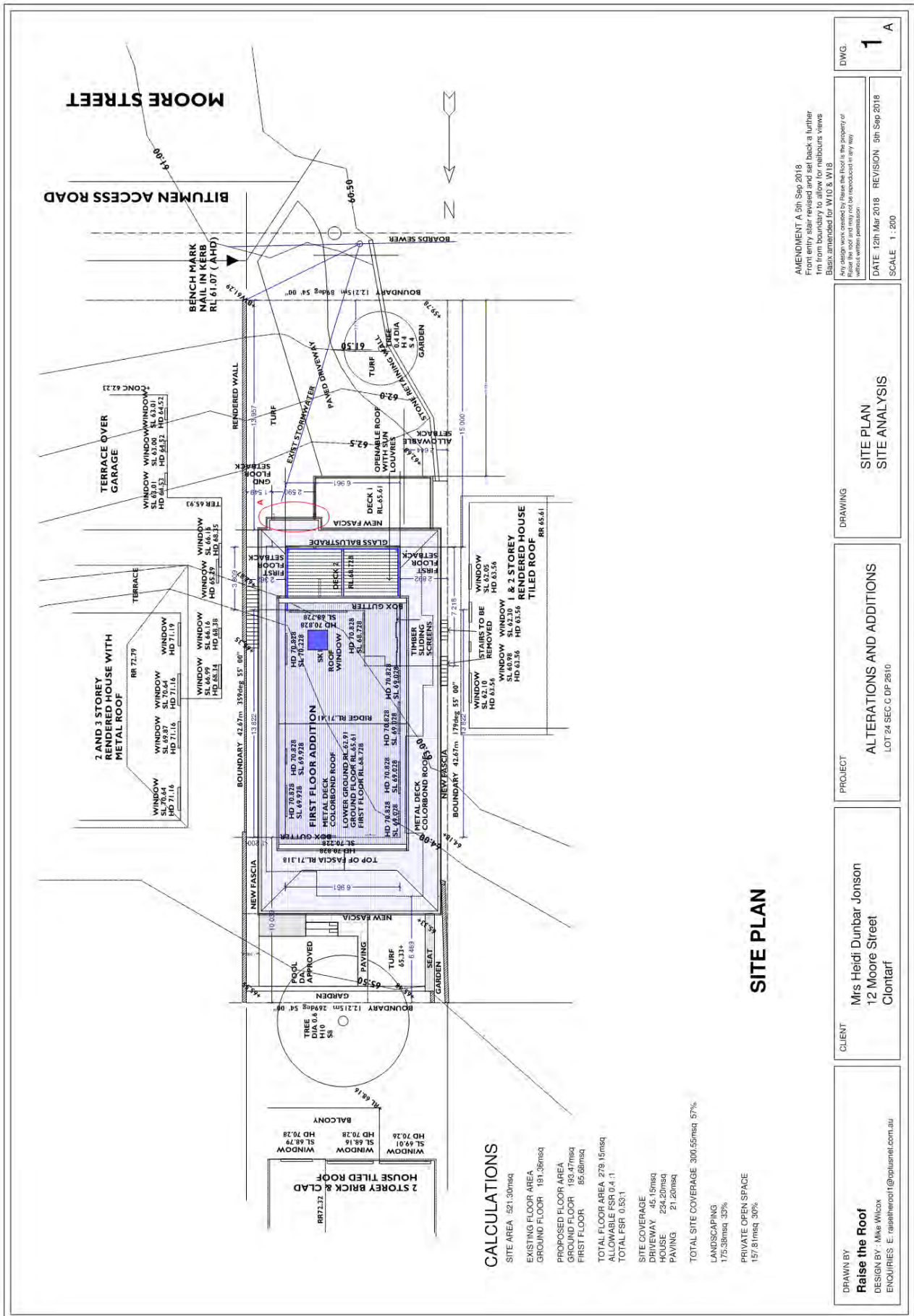


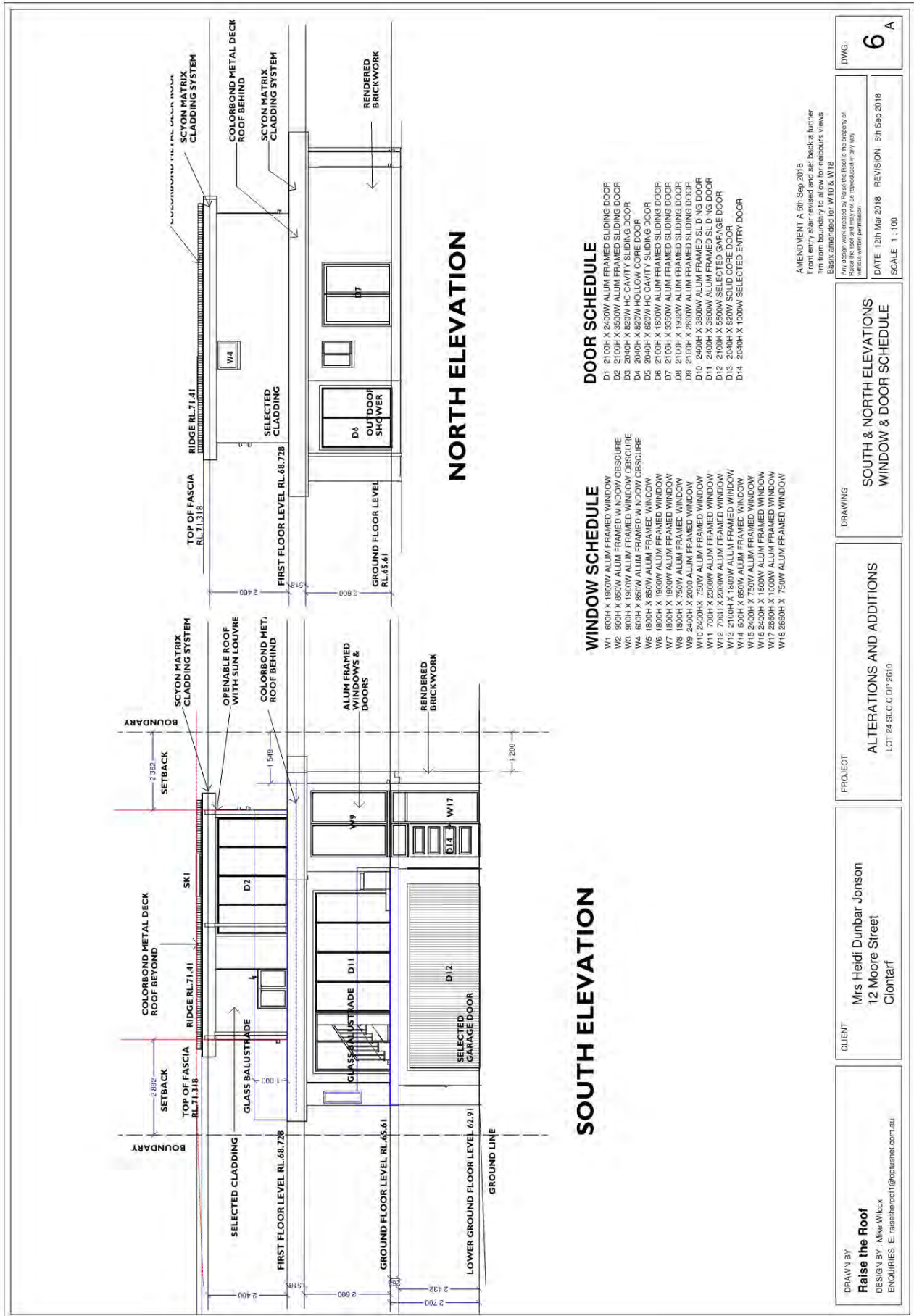
Figure 11. View from ground floor dining area to the south.

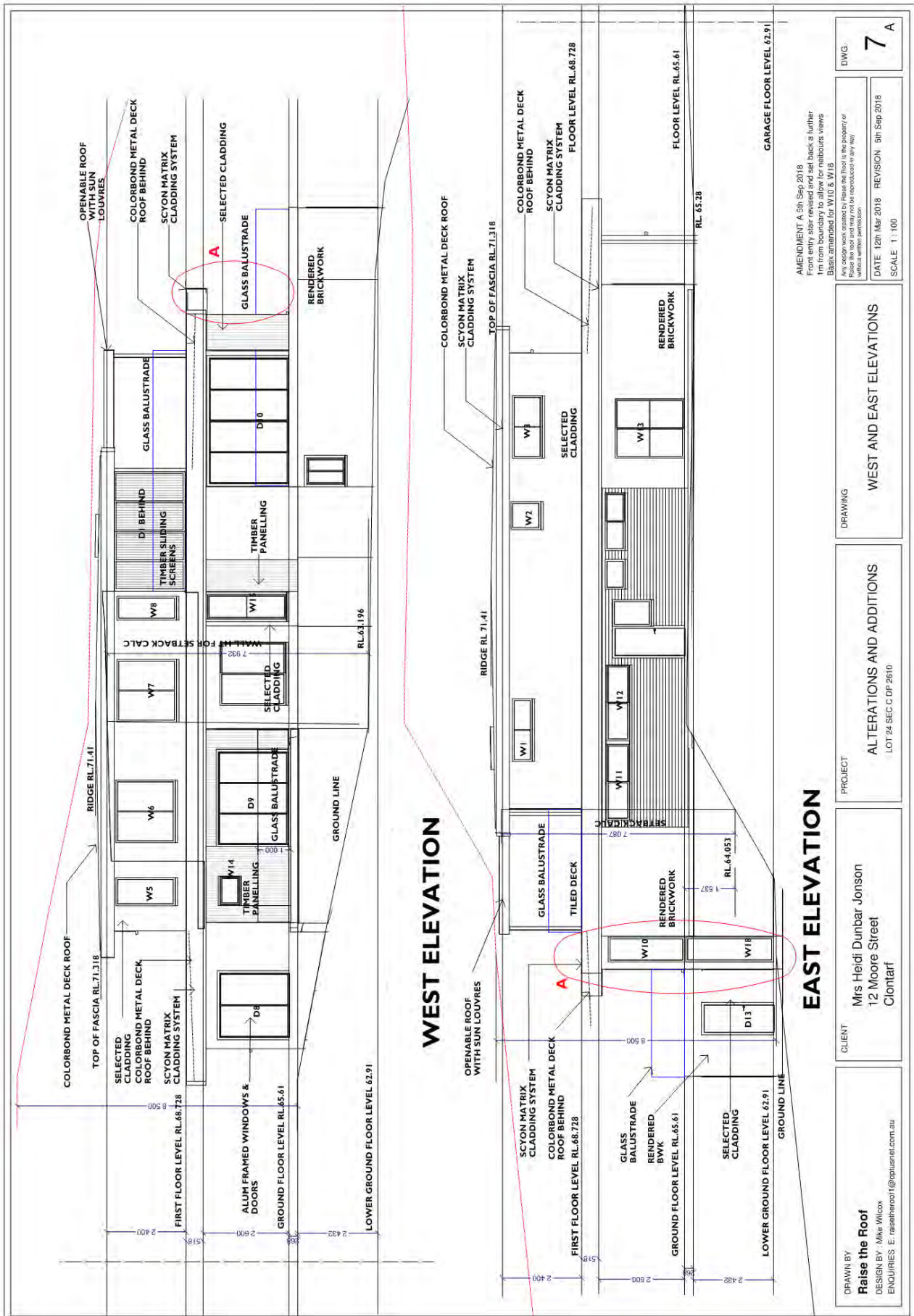
No. 13 Alma Street, Clontarf



Figure 12. View from ground floor balcony to the south-west.







ITEM 3.2	DA2018/0764 - 98 CUTLER ROAD, CLONTARF - ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING HOUSE
REPORTING MANAGER	RODNEY PIGGOTT
TRIM FILE REF	2018/599004
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.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/0764 for alterations and additions to the existing dwelling house on land at Lot 35 DP 2610, 98 Cutler Road, Clontarf, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0764
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 35 DP 2610, 98 Cutler Road CLONTARF NSW 2093
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:	Peter Thomas Bowes
Applicant:	BBF Town Planners
Application lodged:	10/05/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	16/05/2018 to 01/06/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,039,290.00

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) 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);

DA2018/0764

Page 1 of 42



- 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 - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.4.2 Alterations and Additions
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 35 DP 2610 , 98 Cutler Road CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of an allotment located on the northern side of Cutler Road.</p> <p>The site is irregular in shape with a frontage of 13.2m along Cutler Road and a depth of 23.535m-28.67m. The site has a surveyed area of 317.9m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling on site..</p> <p>The site has a slope from the rear to the front of the property, including a fall of approximately 8m.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses on each side of Cutler 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:

- DA608/2003- Replacement of leaking roof, with grey colourbond approved on 19 January 2004.
- DA115/2017- Removal of Gum tree approved on 24 August 2017.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for alterations and additions to the existing dwelling including:

- Excavation.
- Construction of "Level 1" including garage, storage, laundry, lift and stairs.
- Construction of "Level 2" with bedroom, ensuite, walk in robe, media room and cellar.
- Construction of retaining walls
- Landscaping.

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
DA2018/0764	Page 3 of 42



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	Mainly 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 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 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 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 Manly 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.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

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:
Tomasy Pty Ltd	1/41-49 Darley Street MONA VALE NSW 2103

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

- Excavation
- Overdevelopment
- Inadequate information (overshadowing and view sharing)



The matters raised within the submissions are addressed as follows:

- **Excavation**
Comment:
The support provided by the geotechnical report (subject to conditions to be enforced), a proposed total floor space that can be reasonably expected (given compliance with the clause for FSR to undersize lots under the Manly DCP), the lack of impact to natural watercourses and the limitation of change to the topography given its existing hard surface and artificial nature, all show that the proposal provides an adequate outcome for the area as a result of the proposed excavation.

- **Overdevelopment**
Comment:
The proposal is compliant with the control under the DCP for floor space to undersize lots. Along with the compliant height, reasonable setbacks and modulation as described further in this report, this provides a situation in which the development proposed is of a bulk that can be reasonably expected under the Manly DCP, given the context of this site and area. Additionally, it is noted that the proposed height of the building is substantially lower than the existing height of the neighbouring buildings and that the soft landscaping provided to the frontage will assist in reducing the presentation of development.

- **Inadequate information (overshadowing and view sharing)**
Comment:
The submitted information along with assessment made by the Assessment officer (through site visits) was adequate to determine the proposed impact on overshadowing and views. These impacts have been assessed further in this report.

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 completion of landsc
NECC (Development Engineering)	<p>3rd referral response 15/8/2018</p> <p>An OSD design has been submitted on 7/8/2018.</p> <p>The plan is prepared by Jack Hodgson Consultants.</p> <p>Development Engineer has assessed the plan.</p> <p>We raise no objection to the application subject to the following conditions of consent.</p> <p>The total proposed impervious areas of the development is over 60 % of the total site are</p> <p>In accordance with Council's " Manly Specification for On site Stormwater management 2</p>

DA2018/0764

Page 6 of 42

Internal Referral Body	Comments
	<p>detention system (OSD) is required. There has no OSD details in this DA submission. As such, Development Engineer cannot process further assessment without the OSD information.</p> <p>2nd referral 31/7/2018 An email has been sent on 10/7/2018 to clarify the requirement of the OSD in accordance with the DA. And no addition/ new information has been submitted. Please refer to my original comment on the DA.</p> <p>Hi Alex,</p> <p>Additional information has been provided and is in TRIM. (7/08/2018)</p> <p>Regards, Tom</p>
Property Management and Commercial	<p>See TRIM 2018/512472</p> <p>DA2018/0764 - 98 Cutler Road, Clontarf</p> <p>Property Referral Comments</p>  <p>There is a current Road Reserve Consent Approval for the existing part garage structure proposed works under this DA are approved this Road Reserve Consent will be cancelled.</p>

Internal Referral Body	Comments
	<div data-bbox="422 459 949 1041">  </div> <div data-bbox="965 459 1316 1019">  </div> <p data-bbox="422 1041 805 1108">Illustration of Entry Stair retaining wall layout</p> <p data-bbox="422 1220 1316 1534"> The new DA shows a retaining wall/garden bed is proposed within the Council road reserve Consent Approval unless the plans are altered to move this back within the prop If a Road reserve Consent Approval is required the following is to be conditioned within th <i>"A "Consent for use of a portion of Road Reserve" Application will be required for within Council's Road Reserve. In this regard please contact Council's Administr Please note that this application must be obtained prior to issuing of the Construc</i> Lisa Henderson Property Officer 10/8/18 (rec'd 9/8/18) </p>

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)*

DA2018/0764

Page 8 of 42



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. A294809_02).

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.



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	8m	N/A	Yes.
Floor Space Ratio Site area: 317.9m ²	FSR: 0.4:1 (127.16m ²)	FSR: 0.868:1 (276m ²)	117%	No, see comments under Clause 4.6.

Note:

Under Clause 4.1.3.1 of the Manly DCP 2013, exceptions to FSR for undersized lots are provided. In this case, the subject site is in Area 'R' for subzones on the LEP lot size map. The clause provides that calculation for FSR on this 'undersized lot' can be based on '750sqm lot size/site area'. The following shows that the proposed development is compliant with this:

Requirement (based on 750sqm lot size/site area)	Proposed
0.4:1 (300m ²)	0.368:1 (276m ²)

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
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Floor Space ratio

Requirement:	0.4:1 (127.16m ²)
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Proposed:	0.868:1 (276m 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	117%

The proposal must satisfy the objectives of Clause 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 dwelling is compliant with the controls for open space and landscaped area as well as the development standard for building height to provide a building that would present at a lower height than the neighbouring properties and with a presentation of landscaping and vegetation that is complementary with the area. Additionally, the proposal is compliant with Clause 4.1.3.1 of the Manly DCP which provides exceptions to FSR for undersized lots which shows that the proposed bulk and scale is consistent with what is expected and desired in the area. Along with the vegetated presentation at the frontage provided by planter boxes, this ensures that the proposed development is consistent with the existing and desired streetscape character of the area.

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

Comment:

As a result of the maintenance of a compliant building height, reasonable front setbacks to the upper floors and the majority of new works being to lower levels, view corridors are adequately maintained to the through the front of the subject site from the neighbouring properties.

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

Comment:

DA2018/0764

Page 11 of 42



The proposed development would be more than 2.5 metres lower in height than the neighbouring buildings as it allows for habitable areas at lower levels of the site. Along with this reduction in bulk through building height minimisation, this maintains appropriate visual relationship as the existing area to the front of the site is made up of predominantly retaining wall and rock (presenting as a hard surface and built form than a natural or vegetated slope). As such, transformation of this area into built form would maintain a similar visual relationship on site but also provide a positive outcome through vegetation features in planter boxes to be complementary with the vegetated areas at the neighbouring sites.

It is also noted that Council's Landscape officer supported the proposal, subject to conditions.

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 building height, adequate building modulation and subject to the recommendations and conditions provided by the Geotechnical report, the proposal will adequately minimise environmental impacts.

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:

The proposal is for alterations and additions to the existing dwelling.

It is considered that the development satisfies this objective.

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

Comment:

Not applicable.

DA2018/0764

Page 12 of 42



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 below the existing levels along with a car parking level can provide a visual outcome for the streetscape that is more complementary with surroundings than the existing rock and deteriorated retaining walls.

(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 a justification which includes the following:

"It has been determined that the proposal has a gross floor area of 275sqm resulting in an FSR of 0.86:1 and is therefore non-compliant with the FSR standard by 147.84sqm (53%). Having regard to the stated objectives and pursuant to Clause 4.6(3)(a) it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- The site is significantly below (432.1sqm under) the minimum lot size requirement pursuant to the Manly LEP 2013 and would yield a compliant FSR (0.36:1) based on the minimum lot size of 750sqm. A variation is therefore requested pursuant to Clause 4.1.3.1 of the Manly DCP 2013.*
- The proposed development adhered to the objectives of the R2 Low Density Zone in relation to residential development.*



- The proposed development is consistent with the objectives of the floor space ratio development standard as set out under Clause 4.4(1) of the MLEP 2013 in that:
 - a) The proposed alterations and additions do not result in an adverse impact on the existing or desired future streetscape character;
 - b) No existing valuable landscape or townscape features will be lost as a result of the proposed development;
 - c) The height, bulk, scale and floor space proposed are entirely consistent with the built form characteristics established by adjoining development and development generally within the sites visual catchment.
- It has been determined that the floor space ratio proposed will not give rise to any adverse residential amenity impacts in terms of view loss, overshadowing, privacy or visual bulk. The proposal provides for the sharing of public and private views.
- The height of the dwelling complies with the maximum permissible height limit pursuant to 4.3(2) of the MLEP 2013. Pursuant to Clause 4.6(3)(b) there is considered to be sufficient environmental planning grounds to justify contravening the floor space ratio development standard in that:
 - The proposal is considered to satisfactorily meet the objectives for the R2 Low Density Residential Zone and the objectives of the floor space ratio development standard;
 - The variation is requested due to the topographical (steep slope) environmental constraints of the site and position of the existing dwelling to be retained;
 - The subject site is an undersized allotment. Based on the minimum lot size for the site under the MLEP 2013 (750sqm), the proposed FSR of 0.36:1 would comply with the standard;
 - It has been determined that the floor space ratio proposed will not give rise to any adverse residential amenity impacts in terms of view loss, overshadowing, privacy or visual bulk. The proposal provides for the sharing of public and private views;
 - Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the height of the proposed development offensive, jarring or unsympathetic in a streetscape context nor the built form characteristics of development within the sites visual catchment. Accordingly it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the harbour, 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.
 - Having regard to *Four2Five Pty Ltd v Ashfield Council* (2015) NSW LEC 1009 and clause 4.6 (3)(a) of HLEP 2013 I am of the opinion that compliance with Clause 26 of the SEPP is unreasonable and unnecessary in the circumstances of this application, given the relationship of the proposed height of the building to its neighboring sites; the absence of environmental impacts associated with privacy, view impacts or sunlight access to neighbouring dwellings.
 - The proposal accords with the matters for consideration pursuant to Section 4.15 of the *Environmental Planning & Assessment Act 1979*.

(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:

DA2018/0764

Page 14 of 42



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 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: 317.9m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	East 7m (based on gradient 1:12)	6.7m	N/A	Yes.
	West: 7.5m (based on gradient 1:6)	8m	N/A	No, see comments.
4.1.2.2 Number of Storeys	2	4	N/A	No, see comments.
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	1.6m-7.2m.	N/A	No, see comments.
4.1.4.2 Side Setbacks	East: 2.23m (based on wall height)	0.7m-2m	N/A	No, see comments.
	West: 2.66m (based on wall height)	1.1m-3.1m	N/A	No, see comments.
	Windows: 3m	0.7m-3m	N/A	No, see comments.
4.1.4.4 Rear Setbacks	8m	4.7m	N/A	No, see comments.
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 60% of site area	65.7% (209m ²)	N/A	Yes.

DA2018/0764

Page 15 of 42



Residential Open Space Area: OS4	Open space above ground 25% of total open space	19.1% (40m ²)		
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	43% (90m ²)	N/A	Yes.
4.1.5.3 Private Open Space	18sqm	18sqm	N/A	Yes.
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	67%	N/A	No, see comments.
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	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 x 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
3.3.1 Landscaping Design	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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes

DA2018/0764

Page 16 of 42



Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance

The proposed garage is non compliant with the control for front setbacks, being 1.7m-4.2m from the frontage.

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:

Given the existing excavation required to set the car parking back from the street and the proposed planter to the roof of the garage, the proposal will reasonably minimise visual impact due to its setback and design. The proposed parking is further setback than the existing garage and is also compliant with the numerical requirement for number of spaces for car parking under the Manly DCP. This provides a better outcome that also minimised visual impact.

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

Comment:

The proposal provides a reasonable front setback (given the amount of excavation required to obtain this), resulting in car parking that is further setback than the existing garage. Along with the proposed planter box, this provides for a development that complements the identified streetscape.

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

Comment:

The proposal is compliant with the requirement for landscaped area under the Manly DCP and provides an adequate combination of build form and vegetation at the street frontage.

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

Description of non-compliance

The proposal is non-compliant with the requirement for windows to be setback 3m from the boundary, being 0.7m-1.5 m at the east and 1.7m-3m at the west.

The proposal is also non compliant with the control for side setbacks (see comments under setbacks).

Merit consideration:

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

Objective 1) To 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 provides windows that are within the side setbacks but are narrow, obscured or well separated from adjoining living areas to ensure that there would not be unreasonable overlooking between the proposed development and adjoining properties. In particular, the windows which are adjacent to 96 Cutler Road are highlight and screened along with one narrow window. Additionally, the physical separation and orientation of the western elevation away from the neighbouring property, ensures privacy loss is minimised in this area.

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:

As a result of the proposal maintaining a similar front and rear setback along with the adequate modulation to the side elevations, the proposal will provide spacing that adequately allows for both privacy and access to other amenity such as light and air. Additionally, the front setback also allows for views to be maintained for neighbors through the front of the subject site along with the existing views directly to the front of these sites.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal provides entrances and open space above ground to ensure 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:

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

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

Comment:

The subject site and adjoining properties have views to the south toward the harbour. As a result of the orientation and subdivision pattern of these sites, the views are predominantly available over the front boundary. As a result of the dwelling maintaining a similar front setback to the existing dwelling, the neighbouring properties will reasonably maintain these views to the front of the property and the new development will provide further opportunity for access to these views at the front of the property. This provides a reasonable circumstance and balance for view sharing.

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:

96 Cutler Road

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 to be affected are water views over the side boundary and to the front of the subject site. These views include land and water interface but are partial relative to the whole view available to the front of 98 Cutler Road.

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 over the western side boundary and to the front of 96 Cutler Road. Views to be affected are generally from areas at the rear of 98 Cutler and through the side setback. The views from



the front living areas of the property are less affected or unaffected.

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:

As a result of the views that are retained from the front living areas of 96 Cutler Road and the minor extent of view loss over a side boundary, the overall view loss for the property is negligible.

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:

In this instance, a negligible impact arises as a result of the proposed development. As a result of the reasonable design and maintenance of a view corridor to the front of the subject, this impact is reasonable.



Photo 1: Taken from rear room in 96 Cutler Road.

100 Cutler Road

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 to be affected are water views over the side boundary and to the front of the subject site. These views include land and water interface but are partial relative to the whole view available to the front of 100 Cutler Road.

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:

DA2018/0764

Page 21 of 42



The views are obtained over the eastern side boundary and to the front of the subject site. The views affected are from a living space at the front of 100 Cutler Road and the as a result of being over the side boundary and given views affected it is relatively unrealistic to expect retention of the view.

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:

As a result of the views that are retained to the front of 100 Cutler Road and the minor extent of view loss over a side boundary, the overall view loss for the property is negligible.

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:

In this instance, a negligible impact arises as a result of the proposed development. As a result of the reasonable design and maintenance of a view corridor to the front of the subject, this impact 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:

As a result of the orientation and location of neighbouring properties, the major views which exist are harbour views to the south. The reasonable front setback and modulation of the proposed development at the front of the site ensure that there will be a minimisation of view loss and reasonable limitation of view creep.

In addition, the compliant building height ensures potential remains for views to be obtained from properties to the north.

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

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

DA2018/0764

Page 22 of 42

Description of non-compliance

The proposal is non-compliant with the control for wall height at the western elevation. The requirement is 7.5m and the proposed height is 8m.

The proposal is also non-compliant with the control for number of storeys. The requirement is for 2 storeys and the proposal is for 4.

Merit consideration:

With regard to the consideration for a variation, the clause states that the objectives for Height of buildings under Clause 4.3 of the Manly LEP 2013 are particularly applicable and as such the non-compliance are considered against these objectives:

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

Comment:

The proposed overall building height is compliant with the development standard despite being non-compliant with the controls for number of storeys and wall height. The area is generally characterised by two and three storey development with a mixture of roof forms. The proposed dwelling would be at a lower height than the neighbouring buildings and the style and height would appropriately fit into the surrounding area.

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

Comment:

The proposal provides a compliant building height under the Manly LEP, provides a well modulated design and is compliant with the requirements for open space under the Manly DCP. This ensures that bulk and scale is adequately reduced to ensure visual and amenity impact is minimised.

(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:

As a result of the compliant building height and the corridor retained to the front of the dwelling, the proposed building would not cause any unreasonable view loss. An assessment for the neighbouring properties in accordance with the court established views principle in this report has also found the view loss to be reasonable.

(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 reasonably provides for sunlight and solar access through adequate setbacks and physical separation to both public and private open spaces. The proposal is compliant with the controls for Sunlight Access and Overshadowing under the Manly DCP, 2013.



(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.

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.

4.1.3 Floor Space Ratio (FSR)

Under Clause 4.1.3.1 of the Manly DCP 2013, exceptions to FSR for undersized lots are provided. In this case, the subject site is in Area 'R' for subzones on the LEP lot size map. The clause provides that calculation for FSR on this 'undersized lot' can be based on '750sqm lot size/site area'. The following shows that the proposed development is compliant with this:

Requirement (based on 750sqm lot size/site area)	Proposed
0.4:1	0.368:1
(300m ²)	(276m ²)

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

Description of non-compliance

The proposal is non-compliant with the controls for side setbacks being 0.7m-2m at the eastern setback and 1.1m-3.1m at the western setback.

The proposal is non-compliant with the rear setback being 4.7m with the control of 8m.

The proposal also has windows at these setbacks that are within the 3m setback control for windows at side boundaries.

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 for alterations and additions to a dwelling that is compliant with the requirement for building height under the Manly LEP, well modulated to ensure a minimisation in the presentation of bulk in the streetscape and provided with compliant open space requirements under the Manly DCP to ensure the proposed development would be well integrated with the 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:

The proposal involves new windows that are designed and located so that there would not be unreasonable overlooking into neighbouring uses. This includes obscuring and narrow windows to limit the opportunity for overlooking to an adequate level despite the non-compliant setbacks. The proposal is compliant with the requirements for Sunlight access and Overshadowing under the Manly DCP and this provides a equitable provision of light and sunshine. Additionally, the setback of the car parking from the street provides a more desirable circumstance for traffic than the existing situation.

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

Comment:

The siting of the building is similar to the existing situation with the inclusion of two lower levels. The lowest of these levels includes an area for car parking that is off the street and an improved siting on the existing circumstance, regarding setback from the street. The siting of the associated floor space next to and above this car parking is also reasonable due to the compliance with the provision for floor space ratio for undersized lots under Clause 4.1.3.1 of the Manly DCP. This compliance shows that excavation for floor space in conjunction with car parking is to a reasonable extent, given what is expected under the Manly DCP for lots of this size.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal is compliant with the control for landscaped area under the Manly DCP and provides appropriate landscaping to the front and rear of the site, subject to conditions.

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.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Description of non-compliance

The proposal is non-compliant with the requirement for garages to be a maximum of 50% at the frontage. The proposed garage would be 67% of the frontage.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The existing situation for car parking is non-compliant with the number of spaces required under the Manly DCP. The alterations and additions to the building would result in providing a compliant situation for parking in terms of number of spaces. Given the constraints of the site including excavation required to provide parking setback from the street, this design provides adequate and accessible parking for the site and existing dwelling.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposal provides for two car parking spaces on site which is an addition of one space on the existing circumstance and would further reduce the demand for car parking on site.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed garage area is integrated into the design of the dwelling along with landscaping surrounding and a planter box above to assist in minimising visual impact on the streetscape. The car parking is also reasonably setback from the street to ensure access and egress is safe and efficient.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposed area for parking is excavated but at the level of the street. Given the positive outcome of providing the parking to be setback from the street and the constraint of the site, excavation to an area level with the street is a suitable limitation of excavation in this circumstance.

Objective 5) To ensure the width and number of footpath crossings is minimised.

DA2018/0764

Page 26 of 42

Comment:

The proposed driveway crossing provides an adequate size access for two cars to the proposed garage, to ensure width and number of footpath crossings is minimised.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The proposal is compliant with the control for landscaped area and provides a planter box to the roof of the garage as well as a landscaped area at the eastern boundary. This provides an appropriate integration of car parking and landscaping.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

The proposal provides adequate on-site parking to be consistent with the number of spaces required by the Manly DCP. As such, further limiting onsite parking is not appropriate in this circumstance.

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.

4.4.2 Alterations and Additions

Pursuant to Clause 4.4.2a), the proposed demolition for the existing house is less than half the building and as such is not assessed as a whole building under this clause (or for controls in this plan- Manly DCP).

An assessment in accordance with the court established planning principle for demolition also found the proposed development to be for alterations and additions for the purposes of assessment. The existing dwelling is substantially retained, and additionally, the presentation of the existing hard surface (retaining walls) and built form is being replaced with built form integrated with landscaping that would result in a similar presentation.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

The proposal is non-compliant with the control for excavation to be "generally limited to 1m below natural ground level," with the exception of basement parking areas. The proposed excavation is for a basement car parking area with floor space to the rear of and above the parking area.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying



Objectives of the Control as follows:

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- Limiting excavation, "cut and fill" and other earthworks;*
- Discouraging the alteration of the natural flow of ground and surface water;*
- Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment:

The proposal involves excavation and this is generally limited to the siting of the building and for the basement parking area. Given the excavation required to provide accessible and adequate parking off the street and the appropriate integration of this parking into the existing dwelling, the concept of excavation below the existing building is reasonable.

As stated in the Geotechnical report provided, the "topography of the block is controlled by the shallow underlying and exposed Hawkesbury Sandstone bedrock." This sandstone is evident at the front of the site along with retaining walls of varying conditions. As a result of these hard surfaces both at ground level and beneath the site, drainage lines on site vary as they are dependent on the natural seams of the rock as well as the shape, nature and condition of the retaining walls. As such, excavation on this site would not alter or disturb a pattern of drainage that cannot be adequately diverted into other areas. Additionally, the geotechnical report stated that there are no natural watercourses on site.

The proposed excavation will also result in the positive outcome of removing retaining walls resulting in a limitation of retaining wall height and a newly formed area available for planting to soften the impact of new retaining walls and the development.

Given the compliant setback to the lowest level of the basement, the impact on topography is also reasonably limited to the subject site. Additionally, a condition has been placed to require a Dilapidation report to further ensure protection.

Overall, the support provided by the geotechnical report (subject to conditions to be enforced), a proposed total floor space that can be reasonably expected (given compliance with the clause for FSR to undersize lots under the Manly DCP), the lack of impact to natural watercourses and the limitation of change to the topography given its existing hard surface and artificial nature, all show that the proposal provides an adequate outcome for the area as a result of the proposed excavation.

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
- 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 DA2018/0764 for Alterations and additions to the existing dwelling house, on land at Lot 35 DP 2610, 98 Cutler Road, 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
02C-DA- Roof Plan/ Stormwater Plan/ Demolition Plan	12.01.18	ArcLab Pty Ltd
DA2018/0764		

Page 29 of 42



03B-DA- Level 4 Floor Plan	12.01.18	ArcLab Pty Ltd
04B-DA- Level 3 Floor Plan	12.01.18	ArcLab Pty Ltd
05B-DA- Level 2 Floor Plan	12.01.18	ArcLab Pty Ltd
06C-DA- Level 1 Floor Plan (Basement)	12.01.18	ArcLab Pty Ltd
07B- DA- Southern Elevation	12.01.18	ArcLab Pty Ltd
08A-DA- Northern Elevation	12.01.18	ArcLab Pty Ltd
09A-DA- Eastern Elevation	12.01.18	ArcLab Pty Ltd
10A-DA- Western Elevation	12.01.18	ArcLab Pty Ltd
11-DA- Section A	12.01.18	ArcLab Pty Ltd
12B- DA- Section B	12.01.18	ArcLab Pty Ltd
14-DA Retaining Wall Plan	12.01.18	ArcLab Pty Ltd

Engineering Plans		
Drawing No.	Dated	Prepared By
Sediment & Erosion Control Plan	12.01.18	ArcLab Pty Ltd
Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment Report for Proposed Alterations and Additions at 98 Cutler Road, Clontarf. MS31225- Page 1-16	17 August 2017	Jack Hodgson Consultants

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
13-DA- Landscape Plan	10.01.18	Arc Lab Pty Ltd

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 (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)

3. Prescribed Conditions

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

4. **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)

5. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

(c) Where demolition works have been completed and new construction works have not



- commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
 - (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
 - (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
 - (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
 - (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
 - (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
 - (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety



- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. 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.

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

7. On-site Stormwater Detention Compliance

Certification of Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003 and the concept drawing by Jack Hodgson Consultants Pty Ltd, Job number 31225 dated 4/7/2018. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate



Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

8. **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

9. **Blank condition for prior to construction certificate - replace this heading with your condition heading**

A "Consent for use of a portion of Road Reserve" Application will be required for the retaining wall/garden bed within Council's Road Reserve. In this regard please contact Council's Administration Section on 9976 1517. This application must be obtained prior to issuing of the Construction Certificate.

Reason: Encroachment on Council Road Reserve (DACHPCPC1)

10. **Screen Planting**
(2LD02)

A landscaped buffer being provided along the western boundary where side frontage of the development so as to screen the visual impact of the development. Details including species, mature height, planting, pot size (minimum of 25 litres) and spacing to provide continuous screening are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure an effective buffer zone/screen planting is provided.

11. **Dilapidation Report**

A Dilapidation Report is required for this development. A photographic survey of adjoining properties detailing the physical condition of those properties is to be submitted prior to the issue of the Construction Certificate. This survey is to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining properties.

All costs incurred in achieving compliance with this condition must be borne by the person entitled to act on this Consent.

If access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to Council's satisfaction attempts have been made to obtain access and/or advise the affected property owner of the reason for the survey and these attempts have been unsuccessful. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

Reason: To maintain proper records in relation to the proposed development.
(DACPLCPCC1)



CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **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.

14. **Vehicle Crossings**

The provision of a vehicle crossing 4 m wide in accordance with Northern Beaches Council Drawing No A4-3330/2 NH 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

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

15. **Authorisation of Legal Documentation Required for Onsite Detention**

The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.

16. **Registration of Encumbrances for On-site Stormwater Detention**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any

DA2018/0764

Page 37 of 42



interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

17. **On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council.

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 stormwater disposal is constructed to Council's satisfaction. (DACENF10)

18. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

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 the on-site detention and/or pump system is maintained to an appropriate operational standard

19. **Required Tree Planting
(2LD03)**

Details are to be provided of the existing or proposed native trees for the site which are typically expected to reach a height at maturity of 10 metres, to bring the proposal into compliance with Figure 37 of the Manly Development Control Plan 2013. A list of appropriate native trees for the Manly area may be obtained at Council's Customer Service desk and the Manly Council website. Details of new planting are to include appropriate siting and pot size (minimum of 25 litres) in accordance with section 2.1.3 of the Manly Development Control Plan 2013, and schedule 4, Part B, Native Tree Selection. Details are to be submitted with the Construction Certificate to the satisfaction of the Council/Accredited Certifier.

This site with Lot Size of 317.9m² requiring 1 tree.

Reason: This is to ensure the planting of endemic trees back onto the site.

20. **Landscape Completion**

DA2018/0764

Page 38 of 42



(5LD01)

A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the approved Landscape Drawing 13-DA submitted by arclab dated 18.01.18

Additionally side boundary fencing located to rear lawn area of the property.

Reason: This is to ensure the landscaping is planted in accordance with the drawing and maintained appropriately

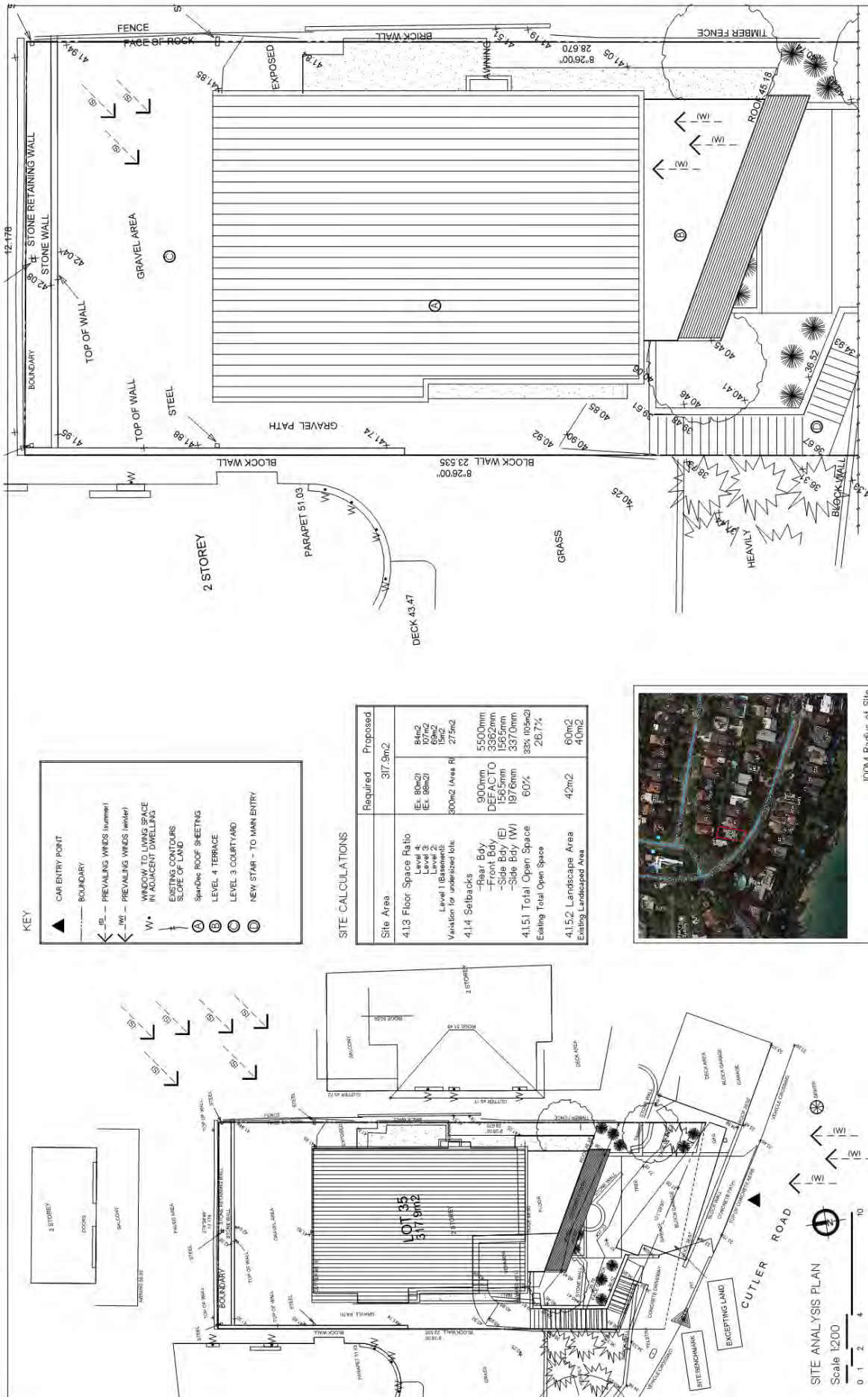
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

21. **Landscape maintenance**

(6LP03)

Landscaping is to be maintained in accordance with the approved Landscaping Drawing submitted by arclab dated 10.01.18

Reason: This is to ensure that landscaping is maintained appropriately.



Client: **BOWES HOUSE**
 Drawn: **ARC**
 Scale: **1:200/100**
 Sheet: **A3**
 Date: **12.01.18**
 Job No.: **0160/15**
 Sheet No.: **01C-DA**
 Revision: **C-19.04.18**

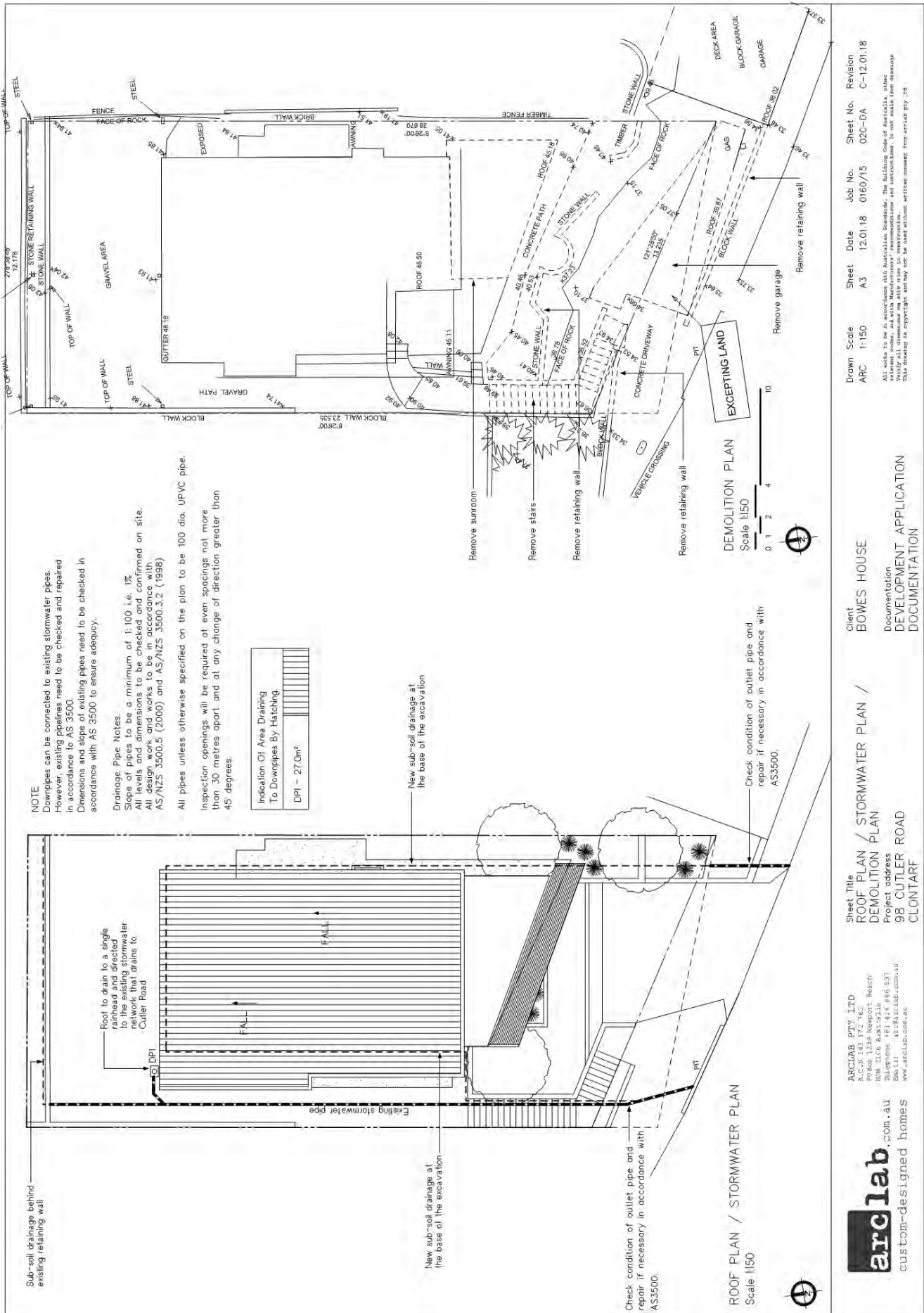
Documentation: **DEVELOPMENT APPLICATION**
 Documentation: **DOCUMENTATION**

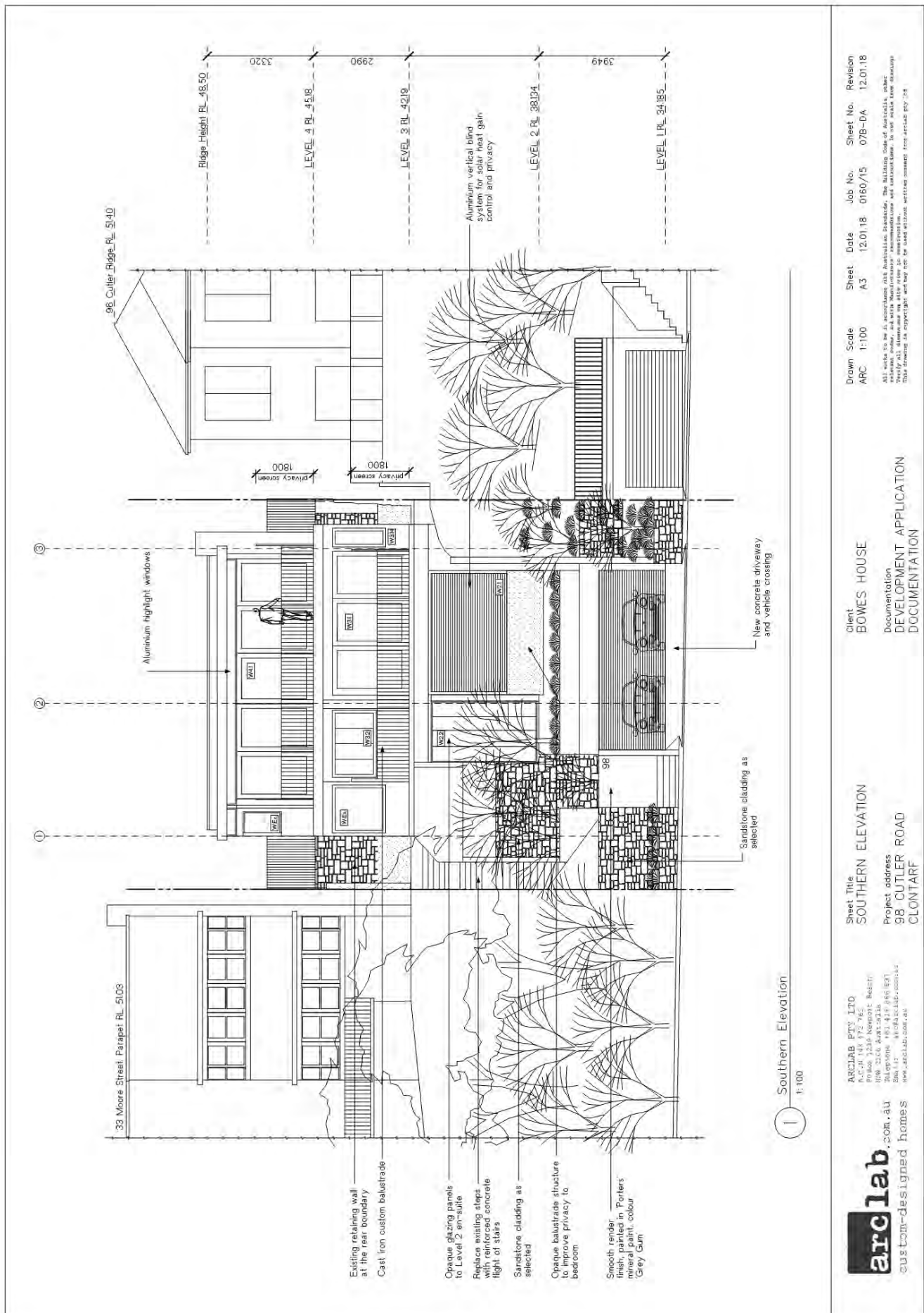
All works to be in accordance with Australian Standards, The Building Code of Australia, other relevant codes, and with Manufacturers' recommendations and instructions. Do not make any changes to this drawing in perpetuity and may not be used without written consent from ARCLAB Pty Ltd.

Sheet Title: **CONTEXT and SITE ANALYSIS**
 Project address: **98 CUTLER ROAD**
CLONTARF

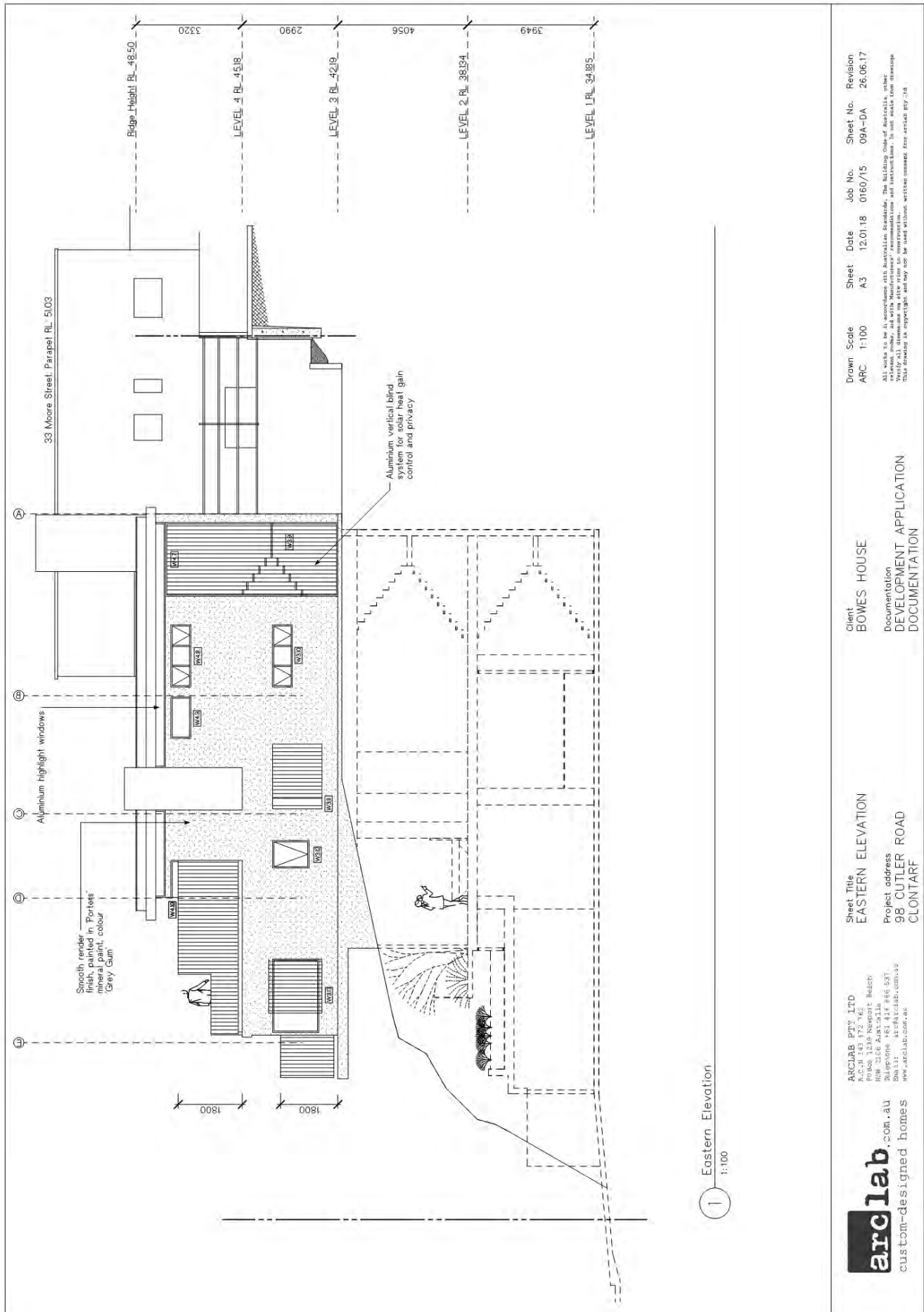
ARCLAB PTY LTD
 A.C.N. 143 172 741
 10/500, 1234 Newmarket Road
 Newmarket, VIC 3176
 Tel: 03 9594 1111
 Email: info@arclab.com.au
 www.arclab.com.au

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Client: BOWES HOUSE
Documentation: DEVELOPMENT APPLICATION DOCUMENTATION

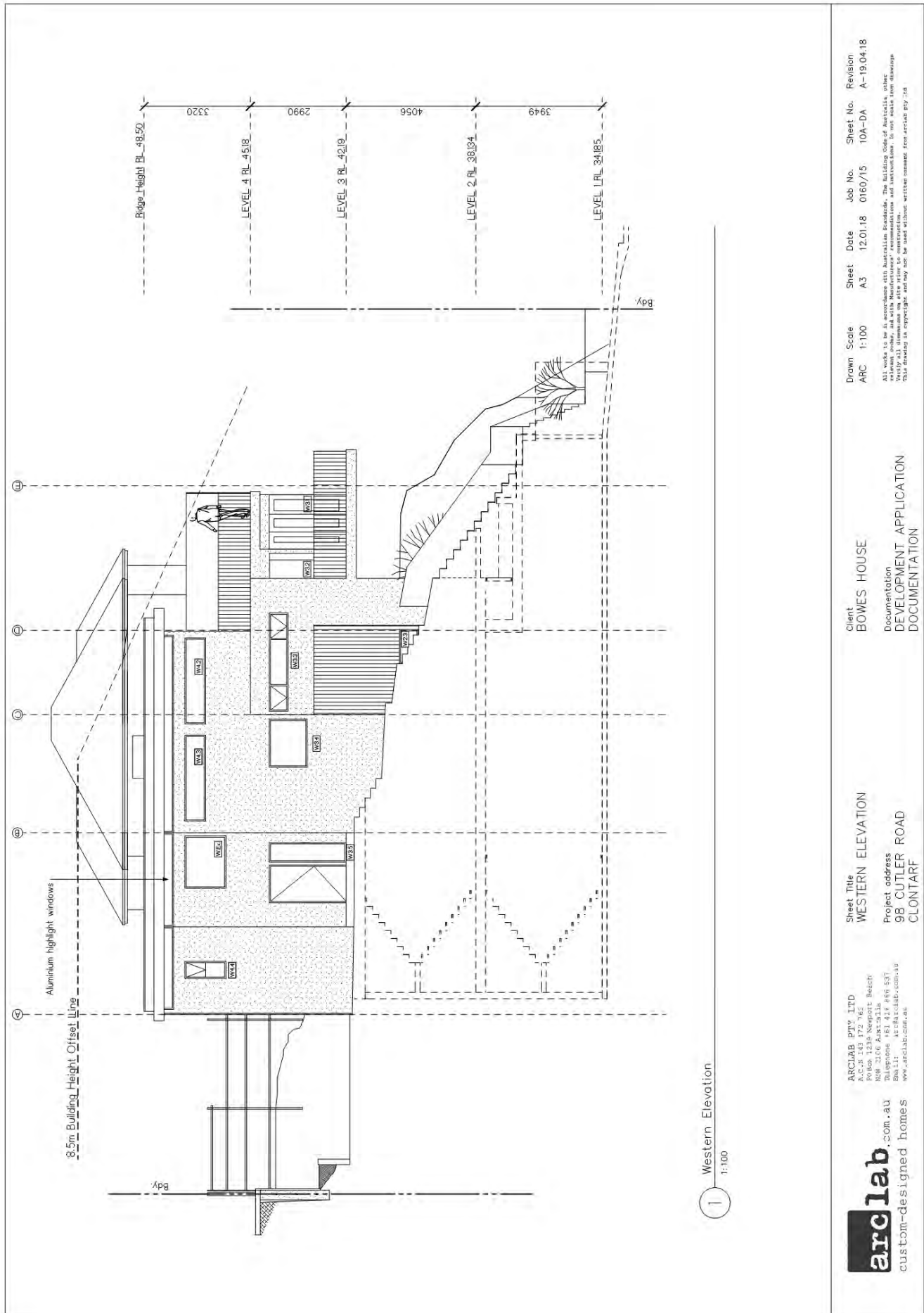
Drawn: ARC
Scale: 1:100
Sheet: A3
Date: 12.01.18
Job No.: 0160/15
Sheet No.: 09A-0A
Revision: 26.06.17

All works to be in accordance with Australian Standards, The Building Code of Australia, other relevant codes, and with Manufacturers' recommendations and instructions. Do not make any changes to this drawing in perpetuity and may not be used without written consent from arc lab Pty Ltd

Sheet Title: EASTERN ELEVATION
Project address: 98 CUTLER ROAD CLONTARF

ARC LAB PTY LTD
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ITEM 3.3	DA2018/0696 - 58 GREYCLIFFE STREET, QUEENSCLIFF - DEMOLITION WORKS AND CONSTRUCTION OF NEW DWELLING HOUSE WITH SWIMMING POOL AND A SECONDARY DWELLING
REPORTING MANAGER	RODNEY PIGGOTT
TRIM FILE REF	2018/599076
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 DA2018/0696 for demolition Works and Construction of new dwelling house with swimming pool and a secondary dwelling on land at Lot 8 DP 13442, 58 Greycliffe Street, Queenscliff, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0696
Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot 8 DP 13442, 58 Greycliffe Street QUEENSCLIFF NSW 2096
Proposed Development:	Demolition Works and Construction of new dwelling house with swimming pool and a secondary dwelling
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	Michael Vincent Collins Hollie Rebecca Collins
Applicant:	Vaughan Architects Pty Ltd
Application lodged:	02/05/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	04/05/2018 to 22/05/2018
Advertised:	Not Advertised
Submissions Received:	3
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,436,800.00

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) 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;

DA2018/0696

Page 1 of 45



- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - D6 Access to Sunlight

SITE DESCRIPTION

Property Description:	Lot 8 DP 13442 , 58 Greycliffe Street QUEENSCLIFF NSW 2096
Detailed Site Description:	<p>The subject site is located on the lower, southern side of Greycliffe Street and adjoins the northern banks of Manly Lagoon. The site has a frontage to the lower section of Greycliffe Street of 14.475m, an eastern boundary of 47.245m, a southern boundary to Manly Lagoon and a western boundary of 53.58m. The site provides a total area measuring 499.5m².</p> <p>The site contains a fall from west to east and from north to south. In total the site has a cross fall of approximately 15.8m (27%).</p> <p>Currently, the site contains a dilapidated brick dwelling with a separate concrete carstand with storage below located on the front and eastern corner boundaries of the site.</p>

Map:



SITE HISTORY

PLM2018/0028

A pre-lodgement meeting was held on 15 March 2018 in relation to demolition of the existing dwelling and construction of a new dwelling, swimming pool and secondary dwelling. The main concerns raised at this meeting include:

- Access to garage
- Visual impact of south facing wall at base of the building
- Stairs within road reserve and infilling part of road reserve
- Stormwater

For each of these issues, the Applicant was advised that any non-compliance should be amended to comply with the controls.

DA2018/0696

Development Application DA2018/0696 for demolition of the existing structures and construction of a new dwelling, swimming pool and secondary dwelling was lodged with Council on 2 May 2018. This application is the subject of this assessment.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks demolition of the existing structures on site and construction of a new dwelling, swimming pool and secondary dwelling. Specifically, the proposed development includes the following:

Lower Ground Floor RL 12.0

- Bedroom 2 and 3
 - Rumpus Room
- DA2018/0696



- Store Room
- Bathroom
- Laundry
- 2000Ltr rainwater tank
- Air conditioner units
- Rumpus room
- Terrace off Rumpus and Bedroom 2 (19m²)
- Stair access to lower southern garden and northern garden

Ground Floor RL 15.0

- Entry & WC
- Kitchen, living and dining room
- South facing terrace adjoining the kitchen and living room (25m²)

RL 15.9

- One (1) bedroom granny flat under the proposed garage (41.6m²).

RL 14.9

- Landscaped outdoor space to the north side of the house
- Swimming pool

First Floor (RL17.95)

- Master bedroom, ensuite and robe to the south
- Terrace off master bedroom (7.6m²)
- Rumpus Room
- Baby Room
- Void to ground floor level



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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 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><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 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</p>



Section 4.15 Matters for Consideration	Comments
	<p>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 Warringah 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 process council is in receipt of 3 submission/s from:

Name:	Address:
Michael Royden Upfold	56 Greycliffe Street QUEENSCLIFF NSW 2096
Mrs Juliana Letizia Upfold	56 Greycliffe Street QUEENSCLIFF NSW 2096
Mr Gary Allen Beauchamp	52 Greycliffe Street QUEENSCLIFF NSW 2096



While there are three (3) submissions identified for this application, two (2) of those submissions were from the same property being 56 Greycliffe Street which are to be considered one (1) submission. Therefore, there are technically submissions from two (2) properties. The following issues were raised in the submissions and each have been addressed below:

- **Position of dwelling on the site**

I wish to lodge an objection to the Southern Position of this dwelling.

I reside on the easterly side of the house and currently enjoy the maximum of the winter sun in my lounge room and the Westerly side of the balcony. With the development as currently lodged, this will eliminate a lot of the sun which my property is exposed to. If the property could be relocated or redesigned to be built closer to the Northern border (Greycliffe Street) this would still allow the applicants to maintain their proposed size and swimming pool.

I respectfully request Council to consider my situation as I am retired and spend a lot of time enjoying the winter sun in my lounge.

Comment:

A full assessment of solar access and overshadowing from the proposed development has been provided under Part D6. The development is considered acceptable in terms of overshadowing and its location generally.

- **Damage to road from construction vehicles**

The proposed new dwelling does not interfere with my property sun or views.

However, I am very concerned about the lack of information regarding any proposed management of vehicular access and egress for the removal of the plus 700m3 building, waste and excavation material.

This will involve more than 80 truck moments not counting the numerous truck deliveries when construction starts including the large amount of concrete, bricks, and glass required for the construction of the dwelling, plus the further obstruction and impact of tradesmen's vehicles and heavy equipment.

58 Greycliffe Street is located in a very narrow lane way as depicted on page 7 of the Statement of Environmental Effects - photo caption "56 Greycliffe St from street",

Further, there is no demonstrated management plan or any reference to the Environmental Effects and the impact on the other property owners who reside on the Greycliffe Street (lane way) frontage.

Greycliffe Street (lane way) is not constructed for truck use and will easily begin to breakup with the weight and sheer number of the trucks being purposed in this submission.

Greycliffe Street (lane way) has a unmarked and unfenced sandstone cliff on the lagoon side of the lane way which will not only be damaged by heavy vehicular use but also has a high danger of overturning a truck causing damage to other adjoining properties and possible life.

Access and egress to 58 Greycliffe street can be achieved by utilising Aitken Avenue Aitken Reserve as depicted Page 8 "60 Greycliffe St. from lagoon" and page 16 "River view photo montage" of the Statement of Environmental Effects.



The use of Aitken Avenue via Aitken Reserve as opposed to Greycliffe Street for removal and construction access will be far safer, less dangerous, and pose fewer possible hazardous situations of lower risk and minimise the risk assessment to life than that of using Greycliffe Street (lane way).

Comment:

A condition requiring a Construction Management Program has been included as part of this consent which requires details relating to management of construction vehicles to the site. This Program will ensure that the construction works are undertaken in a way which reduces damage and inconvenience to the road reserve and neighbouring properties within this restricted slip road. Should the builder not maintain sufficient access and safety for the neighbouring properties accessed from this slip road, Council's Rangers and Development Compliance section should be contacted.

In response to concerns over damage to private property, a condition of consent has been included requiring a dilapidation survey report be undertaken of the adjacent dwellings prior to any works commencing on the site.

Suggestions for the use of the adjacent reserve land for construction purposes are not supported in this instance. These issues do not hold determining weight.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	No objections in relation to landscape issues subject to conditions as recommended.
NECC (Bushland and Biodiversity)	<p>Council's Bushland and Biodiversity section considers the Development Application to be consistent with the following Warringah DCP 2011 Controls:</p> <p>Part E The Natural Environment E1 Preservation of Trees or Bushland Vegetation E2 Prescribed Vegetation E4 Wildlife Corridors E6 Retaining Unique Environmental Features</p>



Internal Referral Body	Comments
	E7 Development of Land Adjoining Public Open Space
NECC (Development Engineering)	<p>The application has been assessed, please see the development engineering comment in below:</p> <p>Retaining wall A new retaining wall shall be built to support the new crossing and the front yard. A condition has been placed to request a sec 138 application shall be lodged for further assessment.</p> <p>Overland flow: A report has been submitted and assessment. The applicant shall following the recommendations of the study to ensure the safety of the building and prevent any impact to the adjoining properties.</p> <p>Traffic control: The accessibility of the site is very limited with a shared driveway. A construction management plan with traffic control plan must be designed and provided prior to the commencement of work.</p> <p>Stormwater: The collected on site stormwater shall be discharged into the lagoon with scour and erosion control.</p> <p>As such, Development Engineer has no objection to the application subject to the following conditions of consent.</p>
NECC (Riparian Lands and Creeks)	<p>The applicant has not submitted a Waterways Impact Statement as requested by Council at the at the pre lodgment meeting. The Statement of Environmental Effects also does not address the issue of the proximity of the development to the waterway or state any measures to be taken to minimize impacts to the lagoon during the demolition and construction phases.</p> <p>The proposal has been assessed in the context of its proximity to the lagoon. Recommended for approval subject to conditions.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed dwelling is at the top of the cliff, and well above the Flood Planning Level. It is only the stairway down to the lagoon which is potentially flood affected.</p>
Parks, reserves, beaches, foreshore	No objections raised in relation to the proposal on the adjoining reserve.
External Referral Body	Comments
Ausgrid: (SEPP Infra.) DA2018/0696	<p>The proposal was referred to Ausgrid. No response has been</p> <p>Page 9 of 45</p>



External Referral Body	Comments
	received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	<p>The application was referred to the Aboriginal Heritage Office who provided the following comments:</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted.</p> <p>Relevant conditions of consent have been imposed to reflect these comments.</p>

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 (Affordable Rental Housing) 2009



State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 2: Secondary dwellings

Clause 19: Definition

Development for the purposes of a secondary dwelling includes the following:

- (a) the erection of, or alterations or additions to, a secondary dwelling,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note: The standard instrument defines secondary dwelling as follows:

"secondary dwelling means a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling."*

Comment:

The proposed use is defined under WLEP 2011 as a secondary dwelling.

Clause 20: Land to which this Division applies:

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but <i>only if</i> development for the purposes of a dwelling house is permissible on the land:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	Consistent. The site is located within the R2 low density residential zone and, as such, the proposed use is permissible with consent under WLEP 2011.

Clause 21: Development to which this Division applies

Requirement	Comment
This Division applies to development, on land to which this Division applies, for the purposes of a secondary dwelling.	Consistent. The development involves the construction of a secondary dwelling, as defined by the Standard Instrument. Therefore, this Division applies.

Clause 22: Development may be carried out with consent

Development to which this Division applies may be carried out with consent.



Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The proposed development will result in a single dwelling house and one (1) secondary dwelling.
(3) A consent authority must not consent to development to which this Division applies unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and (b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	(a) As there is no maximum total area specified under WLEP 2011 for a dwelling and secondary dwelling this requirement does not apply to the subject application. (b) The floor area for the secondary dwelling is 41.6m ² which complies with this requirement.
(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds: (a) site area if: (i) the secondary dwelling is located within, or is attached to, the principal dwelling, or (ii) the site area is at least 450 square metres. (b) parking if no additional parking is to be provided on the site.	The site area for this development is greater than 450m ² at 499.5m ² . The proposal is recommended for approval.

Note: A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).

Clause 24: No subdivision

Requirement	Comment
A consent authority must not consent to a development application that would result in any subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out under this Division.	Consistent. This application does not propose any subdivision of the existing allotment.

Conclusion

The proposed secondary dwelling is within the maximum floor area permissible for this form of development and the application is supported.

SEPP (Building Sustainability Index: BASIX) 2004

DA2018/0696

Page 12 of 45



A BASIX certificate has been submitted with the application (see Certificate No. 917315S dated 27 April 2018).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	52

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.9m	16.5%	No

DA2018/0696

Page 13 of 45



Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
5.4 Controls relating to miscellaneous permissible uses	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

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

Requirement:	8.5m
Proposed:	9.9m
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	16.5%

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 WLEP 2011. The assessment is detailed as follows:

Is the planning control in question a development standard?

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

What are the underlying objectives of the development standard?

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

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

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

DA2018/0696

Page 14 of 45



Comment:

While the proposed dwelling presents as a three storey dwelling when viewed from the Lagoon, the built form contains physical and material articulation which lessens the bulk of the structure. The overall height of the dwelling will provide a finished RL which is 855m higher than No. 60 Greycliffe and up to 1.035m higher than No. 56. Greycliffe.

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

Comment:

The proposed development has been assessed in detail in relation to views, privacy and solar access and is considered to maintain adequate amenity in relation each.

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

Comment:

The proposed dwelling is not considered to create any adverse impacts on the scenic quality of Warringah's coastal and bush environments.

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

Comment:

While the proposed development will be visible from the Manly Lagoon Reserve, the visual impact is considered commensurate with the surrounding built form and is not considered to result in any unacceptable impacts as a result.

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 proposed development creates a single dwelling house with a secondary dwelling attached at the front suitable for accommodating the needs of modern family living. The overall form of the dwelling and density are acceptable.

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:

DA2018/0696

Page 15 of 45



The proposed development satisfies this objective.

It is considered that the development satisfies this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposed development maintains the southern landscaped setback to the lagoon reserve which is consistent with development right along this section of Greycliffe Street fronting the lagoon foreshore. The proposed development satisfies this objective.

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

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

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

Comment:

The proposed non-compliance with the building height development standard is considered on merit as acceptable in this instance. The breach occurs at the southern end of the development and affects the ground floor roof structure adjoining the terrace and the southern corner of the master bedroom and ensuite where the topography of the site drops away steeply beneath.

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

Comment:

The proposed non-compliance enables the dwelling to be located further north on the site providing a more significant separation and setback from the lagoon and surrounding natural environment. Allowing a small breach of the height control in this location means that the existing natural landscape to the south is retained and as the dwelling does not extend further down the site results in less impact on views and solar access of the adjoining properties.

(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:

DA2018/0696

Page 16 of 45



The Applicant has provided the following justification for the variation:

"The proposal addresses the site constraints, streetscape and relevant objective of both the standards and the zone. The proposal will not result in any unreasonable amenity or environmental impacts.

We therefore respectfully submit that the proposal will result in a better planning outcome as it improves the character of the neighbourhood and provides new solar access to north orientated private open space to No. 56 Greycliffe St adjacent to the site.

In this case, strict compliance with the development standard for height of buildings development standard of the WLEP2011 is unnecessary and unreasonable.

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4. The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3.

Furthermore, it is important to also consider the objectives of the R2 Low Density Residential zone in relation to the development.

The proposed new dwelling will maintain the low density use in a low density zone. The quality of housing will be improved by the works.

- *No other land uses are proposed.*
- *The landscape settings are in harmony with the natural environment of Warringah as set in the landscape plan submitted with this application.*

Accordingly, it is considered the proposed alterations and additions align with the objectives of the zone.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standards, noting the development will be in the public interest."

(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:

Council's assessment of the Applicant's request for variation concurs with the underlying justification provided.

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



which the development is proposed to be carried out.

Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 low density residential zone in the WLEP 2011.

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

Comment:

In accordance with the Planning Circular PS 18-003 dated 21 February 2018, 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 where the variation to a numerical standard is no greater than 10%. 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 by the DDP.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	9.47m	31.5%	No
B3 Side Boundary Envelope	East - 5m	0.3m up to 1.29m	N/A	No
	West - 5m	0.4 up to 2.32m	N/A	No
B5 Side Boundary Setbacks	East - 0.9m	Nil to retaining walls 0.95m to dwelling	100% Nil	No Yes
	West - 0.9m	Nil to garage 0.49m to pool coping 0.9m to house	100%	No No Yes
B7 Front Boundary Setbacks	6.5m	0.4m to basement	93.9%	No
B9 Rear Boundary Setbacks	6m	12.32m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (199.8m ²)	43.1% (215.1m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes

DA2018/0696

Page 18 of 45



Clause	Compliance with Requirements	Consistency Aims/Objectives
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

Detailed Assessment

B1 Wall Heights

DA2018/0696

Page 19 of 45



Description of non-compliance

The proposed development results in a wall height measuring 9.47m at the centre of the dwelling around the master bedroom and ensuite.

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

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

Comment:

While the proposed design will result in a non-compliance with the wall height requirement of up to 2.27m, this occurs at the centre of the site where the natural topography falls approximate 4.4m over a 6m distance. The design of the proposal incorporates large sections of articulation and varying setbacks to ensure that the impact from adjoining properties is minimised.

When viewed from the lagoon and adjoining park lands the proposal will present as a dwelling with high quality architectural design and finishing which steps back toward Greycliffe Street and is commensurate with the other more contemporary development emerging in this location.

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

Comment:

The site and immediately adjoining area does not contain any significant tree canopy due to its exposed coastal location and sandstone topography. The proposed dwelling will be consistent with the surrounding building forms.

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

Comment:

The subject site is located off a lower section slip road below Greycliffe Street and the finished level of the new roof will be approximately the same as the kerb level on Greycliffe Street above (RL20.850). There have been no concerns raised in relation to view loss from properties to the north or from the adjacent eastern or western properties. The proposed development is considered to provide reasonable view sharing.

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

Comment:

Notification of the proposed development resulted in two (2) submissions raising concerns about ¹ western sun access in winter to No. 56 Greycliffe Street and ² construction related concerns within the slip road. These issues have been addressed in detail within the submissions section of this report and are not considered to result in unacceptable impact on these properties.

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

DA2018/0696

Page 20 of 45



Comment:

The proposal includes excavation for part of the lower ground/basement level up to 3.6m. The layout of the works provides for a garage with granny flat below at the front boundary where the site levels change approximately 2.5m between the road and within front boundary setback. The building form is then broken providing private open space and landscaping between the granny flat and the dwelling with an 8m separation. The main dwelling is sited within the middle of the site to avoid extending into the area where the change in topography is the most extreme.

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

Comment:

The development provides a varied roof line with a skillion roof over the garage with a 12° pitch, and a low hipped roof over the main dwelling with a 3° fall. The proposal is considered satisfactory in terms of the roof design and pitch.

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

B3 Side Boundary Envelope

Description of non-compliance

The proposed development results in non-compliances with the side boundary envelope on the eastern and western elevation. On the eastern elevation, the non-compliance ranges from 1.3m to 0.2m and is reflective of the change in topography along the boundary. On the western elevation, the envelope breach is up to 3.725m at the southern end of the dwelling and extends along the western facade to the north reducing at the same extent as the topography in this location.

Merit consideration

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

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

Comment:

While the envelope breach numerically seems significant, in reality the height and bulk of the development is commensurate with the surrounding building forms. The building bulk is set back generously from the rear boundary with the lagoon and areas where a breach occurs are mostly stepped back into the site.

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

Comment:

The design includes increasing setbacks and articulation at each level of the development and



orients primary living spaces toward the lagoon and away from neighbouring balconies. While some overshadowing of the adjacent balcony at No. 56 Greycliffe will result in the afternoon during mid-winter, there will be areas on this balcony along the southern end which will retain some western sun during the afternoon period. The proposal is considered to provide adequate light, solar access and privacy to adjoining properties.

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

Comment:

The siting of structures on this site is reflective of the significant topography particularly along the side boundaries and through the centre. The sharp drops in levels have created a design that seeks to avoid these areas as much as possible and has incorporated a lower level excavated into the site to reduce the overall height and bulk as it extends up the site. The design response to the topography of the site is considered acceptable in this instance and characteristic with other newer development along this section of Manly Lagoon.

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

B5 Side Boundary Setbacks

Description of non-compliance

The proposal includes construction of a garage and granny flat which has a nil setback to 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:

- *To provide opportunities for deep soil landscape areas.*

Comment:

The site layout provides deep soil landscape areas between the garage and the dwelling and maintains the 12m setback fronting the lagoon as natural landscaping.

- *To ensure that development does not become visually dominant.*

Comment:

The location of the proposed garage and granny flat on the western boundary will present as a garage structure only as the granny flat will be substantially below the finished levels of the adjoining front setback of No. 60 Greycliffe Street.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

DA2018/0696

Page 22 of 45



The garage and granny flat will present predominantly as a single storey structure from the street and from adjoining properties and are not considered to create any unnecessary bulk.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The garage structure on the western boundary will result in some minor additional overshadowing along the eastern boundary within No. 60 Greycliffe Street. The additional overshadowing occurs in the morning for a few hours and extends approximately 1.2m into the site. There is no further overshadowing, or privacy impacts resulting from this structure.

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

Comment: The proposed garage replaces an existing single carport in a similar location on the site and is not considered to impact on any views to or from the site.

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

B7 Front Boundary Setbacks

Description of non-compliance

The proposed garage and attached granny flat are located within the front setback providing between 0.75m and 5.3m setbacks from the boundary with the slip lane.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The works in this location are effectively two storeys within the front setback on the western side of the site. Due to the difference in level between the street level and the front of dwelling (approximately 2.5m) only the garage structure will be discernible from the public domain. The western side of the site provides a pedestrian transition from the road to the dwelling and is considered to satisfy this requirement.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

Due to the restricted access into this slip road, the consistent pattern of front setbacks consists of garage structures with nil setback to the front and some side boundaries. Predominantly the dwellings along this section of Greycliffe Street are focused to the south toward the lagoon with



parking and access off the slip road. Accordingly, the proposed development is considered to adequately maintain the visual continuity and pattern of buildings and landscape elements in this location.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

As identified, this part of Greycliffe Street is essentially for utilitarian functions. The proposed development is considered to enhance the streetscape and provide safer vehicular and pedestrian access for the occupants.

- *To achieve reasonable view sharing.*

Comment:

The proposed development is considered to maintain any existing views across the site.

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

D6 Access to Sunlight

Merit consideration

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

- *To ensure that reasonable access to sunlight is maintained.*

Comment:

The subject site has a north-east to south-west orientation which is repeated by the adjoining properties. The new dwelling will result in some additional overshadowing as a result of the site orientation. At 9am, the new works will result in some additional overshadowing of the eastern facade of No. 60 Greycliffe Street. The overshadowing has moved away from this site prior to 12 midday and it therefore receives adequate sunlight access for the remainder of the day.

No 56 Greycliffe Street is located to the east of the site. This property will receive some additional overshadowing of the western facade from midday which will include some shadowing of the western side of the upper level south facing terrace. Due to the main dwelling structure being moved further to the south of the site by approximately 5.8m, the shadows also move further down the site opening a new corridor of sunlight access on the northern side of No. 56.

By 3pm, shadows from the proposed dwelling swing around onto the western facade of No. 56. While most of this facade will be in shadow for the second half of the day, there is an area along the southern side of the upper level balcony within this dwelling approximately 1.0m wide which retains sunlight and the area between the dwelling and the garage structure will receive



additional sunlight access previously impacted by the location of the existing dwelling.

On balance, the proposed development is considered to maintain adequate sunlight access to the neighbouring properties.

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

Comment:

The proposed development provides a part 2, part 3 storey dwelling which provides compliant setbacks and articulation from the boundaries with adjoining dwellings. The proposal will provide an architecturally designed dwelling which is a substantial improvement to the quality of structures currently on the site and an overall improvement to the urban environment.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

Comment:

Due to the north-south orientation of the site, the proposed development results in additional overshadowing of the neighbouring properties. The overall impact is considered acceptable as areas worst affected are not high traffic spaces and in fact for No. 56 the private open space area on the northern side of the dwelling receives greater sunlight access from the proposed development. The winter sunlight access for the subject site and the adjoining properties is considered acceptable.

- *To promote passive solar design and the use of solar energy.*

Comment:

The proposed design includes a north facing roof light designed to capture and direct natural sunlight into the first floor level and funnel it through an internal void into the ground floor level kitchen and dining area. The design also makes provision for solar panels on the roof of the dwelling which will produce solar power for the property.

- *To minimise the need for artificial lighting.*

Comment:

The development includes large areas of north facing glazing which contains shading devices designed to protect from the summer sun angles but allow natural light penetration into the dwelling. The dwelling is not considered to require unnecessary amounts of artificial lighting.

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

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

Northern Beaches Council Contributions Plan 2018

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 1,436,800		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 13,650
Section 7.12 Planning and Administration	0.05%	\$ 718
Total	1%	\$ 14,368

CONCLUSION

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

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

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

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

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

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 DA2018/0696 for Demolition Works and Construction of new dwelling house with swimming pool and a secondary dwelling on land at Lot 8 DP 13442, 58 Greycliffe Street, QUEENSCLIFF, 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
DA01 - Site Analysis Plan - Issue 2	24.04.2018	Vaughan Architects
DA02 - Site/Roof & Lower Ground/Basement Floor Plan, Erosion and Sediment Control - Issue 2	24.04.2018	Vaughan Architects
DA03 - Ground, Pool Plan, First Floor & Demolition Plans - Issue 2	24.04.2018	Vaughan Architects
DA04 - East & North Elevations - Issue 2	24.04.2018	Vaughan Architects
DA05 - South & Street/North Elevations - Issue 2	24.04.2018	Vaughan Architects
DA06 - West & South Granny Flat Elevations - Issue 2	24.04.2018	Vaughan Architects
DA07 - Sections & Pool Sections - Issue 2	24.04.2018	Vaughan Architects
DA08 - Sections - Issue 2	24.04.2018	Vaughan Architects
DA09 - Colours & Finishes Schedule	23.04.2018	Vaughan Architects
DA10 - Landscaped Area Plan	23.04.2018	Vaughan Architects
DA11 - Excavation Plan	23.04.2018	Vaughan Architects
LP 2118-01 - Landscape Plan	16.04.2018	Edwina Stuart Landscape Design
PP 2118-01 - Planting Plan-Rear Garden	16.04.2018	Edwina Stuart Landscape Design
PP 2118-02 - Planting Plan-Front Garden	16.04.2018	Edwina Stuart Landscape Design

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
DA2018/0696		

Page 27 of 45



Geotechnical Assessment and Risk Analysis	14 March 2018	D. Katauskas - Consulting Geotechnical Engineer
Waterway Impact Statement	4 June 2018	GIS Environmental Consultants

- 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:

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. Policy Controls

Northern Beaches Council Contributions Plan 2018

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 1,436,800.00		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 13,649.60
Section 7.12 Planning and Administration	0.05%	\$ 718.40
Total	1%	\$ 14,368.00

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

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

Reason: To provide for contributions in accordance with Northern Beaches Council Contributions Plan 2018.

5. Security Bond

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

6. **Construction, Excavation and Associated Works Bond (Road)**

A Bond of \$10000 as security against any damage or failure to complete the construction of road and retaining wall works as part of this consent.

Reason: Protection of Council's Infrastructure

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

7. **Laundry Facilities**

The secondary dwelling is required to be provided with clothes washing facilities, comprising of at least one washtub and space in the same room for a washing machine in accordance with Part 3.8.3 of Volume 2 of the National Construction Code (NCC) – Facilities. Details of upgrading are to be included in the Construction Certificate and be implemented prior to the occupation of the building.

Reason: To ensure adequate provision is made to satisfy the performance requirements P2.4.3 of the NCC for suitable sanitary facilities in the premises.

8. **Fire Separation**

The new part of the building that is proposed to be constructed as a secondary dwelling is required to comply with Part 3.7.1 of Volume 2 of the National Construction Code (NCC) – Fire Separation. Details of upgrading are to be included in the Construction Certificate and be implemented prior to the occupation of the building.

Reason: To ensure adequate provision is made to satisfy the performance requirements P2.3.1 of the NCC for fire separation in the premises.

9. **Stormwater Disposal**

Engineering Plans 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. Stormwater shall be conveyed from the site to the lagoon. An appropriate scour and erosion control device must be designed and submitted in the plan. 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.

DA2018/0696

Page 32 of 45



10. **Application of infrastructure Works on Council Roadway**

An application of infrastructure Works on Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the retaining walls through the nature strip, stair and driveway crossing which are to be generally in accordance with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and/ or Council's Minor Works Policy. The plan shall be prepared by a qualified structural engineer. The design must include the following information: The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges.

An approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To provide public and private safety.

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. **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.

13. **Construction Management Program**

A Construction Management Program shall be prepared which includes the following:

- (a) The proposed method of access to and egress from the site for demolition, excavation and construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;



- (b) The proposed method of loading and unloading, demolition, excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- (c) The location and operation of any on site crane (if required);
- (d) The proposed manner in which adjoining and affected property owners will be kept advised of the timeframes for completion of each phase of the development/construction process;
- (e) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practicing Structural Engineer, or equivalent, and

If any traffic control is to be implemented on local road, an Application of Implement Traffic Control shall be submitted to Council.

A Council approval of the Application of Implement Traffic Control (if required) and Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

14. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – C2

The stairs down to the lagoon must be designed and constructed to ensure structural integrity up to the Flood Planning Level of 3.6m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

15. **Stormwater Management**

The stormwater management system is to ensure that there is no increase in stormwater pollutant loads or stormwater quantity arising from the approved development.

Details demonstrating compliance are to be submitted to the 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, ensuring that the proposed works do not negatively impact upon the existing natural watercourse present on the subject site in accordance with the requirements of the Warringah Local Environment Plan 2000 and the Warringah Creek Management Study 2004 (DACNEC17)

16. **Erosion and Sediment Control Plan**

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

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

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

Reason: To mitigate environmental impact resulting from site disturbance (DACNEC22)

17. **Compliance with Standards**

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

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

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

18. **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)

19. **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

DA2018/0696

Page 35 of 45



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)

20. Dilapidation Report

A dilapidation report surveying adjacent buildings (No. 56 and No. 60 Greycliffe Street) must be conducted prior to any site work. The lateral extent of the survey must cover the likely "zone of influence" of any excavation or construction induced vibration. The survey must be properly documented. The dilapidation report must be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the structural stability of the neighbouring property. (DACPLCPCC1)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

21. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

22. Tree protection

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause

E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
DA2018/0696 Page 36 of 45



v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAD01)

23. **No access through adjoining public reserve**

- i) No access or storage of materials is permitted over the adjoining public reserve.
- ii) In the event that such access is considered necessary, a Reserves Vehicular Access Permit is required for vehicular access over land under Council care, control and management for the delivery and or removal of materials, waste or equipment where there is no other reasonable route of access and activities are carried out without direct Council supervision.
- iii) Applications can be obtained from Council's website or Parks and Reserves business unit.

Reason: Public Safety and the protection of Council infrastructure. (DACLADPC1)

24. **Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site (DACNED06)

25. **Terraced Sedimentation and Erosion Control Fence**

The applicant must install a terraced style erosion control fence at the back of the development facing the lagoon, perpendicular to the slope heading down to the waterway. The applicant is to ensure that three sediment fences 6m apart starting from the bottom of the site are installed and fixed from western boundary to the eastern boundary. The installation of the fences must be in accordance with requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004).

A sediment control plan detailing the terraced location, fixing and materials to be used for sediment control measures is to be approved in writing by Council prior to commencement of any works on the site.

Reason: To ensure adequate sediment and erosion control measures are in place on the site to protect the surrounding environment.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

26. **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.
DA2018/0696

Page 37 of 45



27. **Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

28. **Temporary Sediment Control Measures**

Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.

Reason: To reduce erosion and prevent sediment runoff into public assets

29. **Cleaning of Vehicles Leaving Site**

Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.

Reason: To reduce sediment being taken offsite

30. **Protection of Adjoining Property - Excavation**

Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.

Reason: To ensure private and public safety

31. **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.

32. **Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

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

DA2018/0696

Page 38 of 45



stressed condition.

(i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of Trees. (DACLAEO3)

33. **Protection of rock and sites of significance**

a) All rock outcrops outside of and below the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features (DACLAEOG1)

34. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection. (DACAHE01)

35. **Installation and Maintenance of Sediment Control**

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

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

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

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

36. **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

DA2018/0696

Page 39 of 45



37. **Retaining wall**
The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.
- Reason: Public and Private Safety
38. **Required Planting**
i) Trees shrubs and groundcovers shall be planted in accordance with the Planting Plan - Rear Garden Dwg No. PP 2118-01 A dated 16.04.18 prepared by Edwina Stuart Landscape Design
ii) Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.
- Reason: To maintain environmental amenity. (DACLAF01)
39. **Landscape Works Certification**
a) Prior to the issue of an 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 conditions of consent.
b) Prior to the issue of an 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 established and maintained in accordance with the approved landscape plan.
- Reason: To ensure that the landscape treatments are installed to provide landscape amenity (DACLAFPOC1)
40. **Removal of All Temporary Structures/Material and Construction Rubbish**
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.
- Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.
- Reason: To ensure bushland management. (DACPLF01)
41. **Waste Management Confirmation**
Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.
- Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.
42. **Swimming Pool Requirements**
The Swimming Pool shall not be filled with water nor be permitted to retain water until:
(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian



Standards (including but not limited) to:

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

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

43. **Noxious weed control**

a) All declared noxious weeds are to be removed and controlled in accordance with the Biosecurity Act 2015.

Reason: Preservation of environmental amenity. (DACLAGOG1)

44. **Landscape Maintenance**

i) Trees shrubs and ground covers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

ii) If any tree, shrub or ground cover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity

45. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern
DA2018/0696 Page 41 of 45

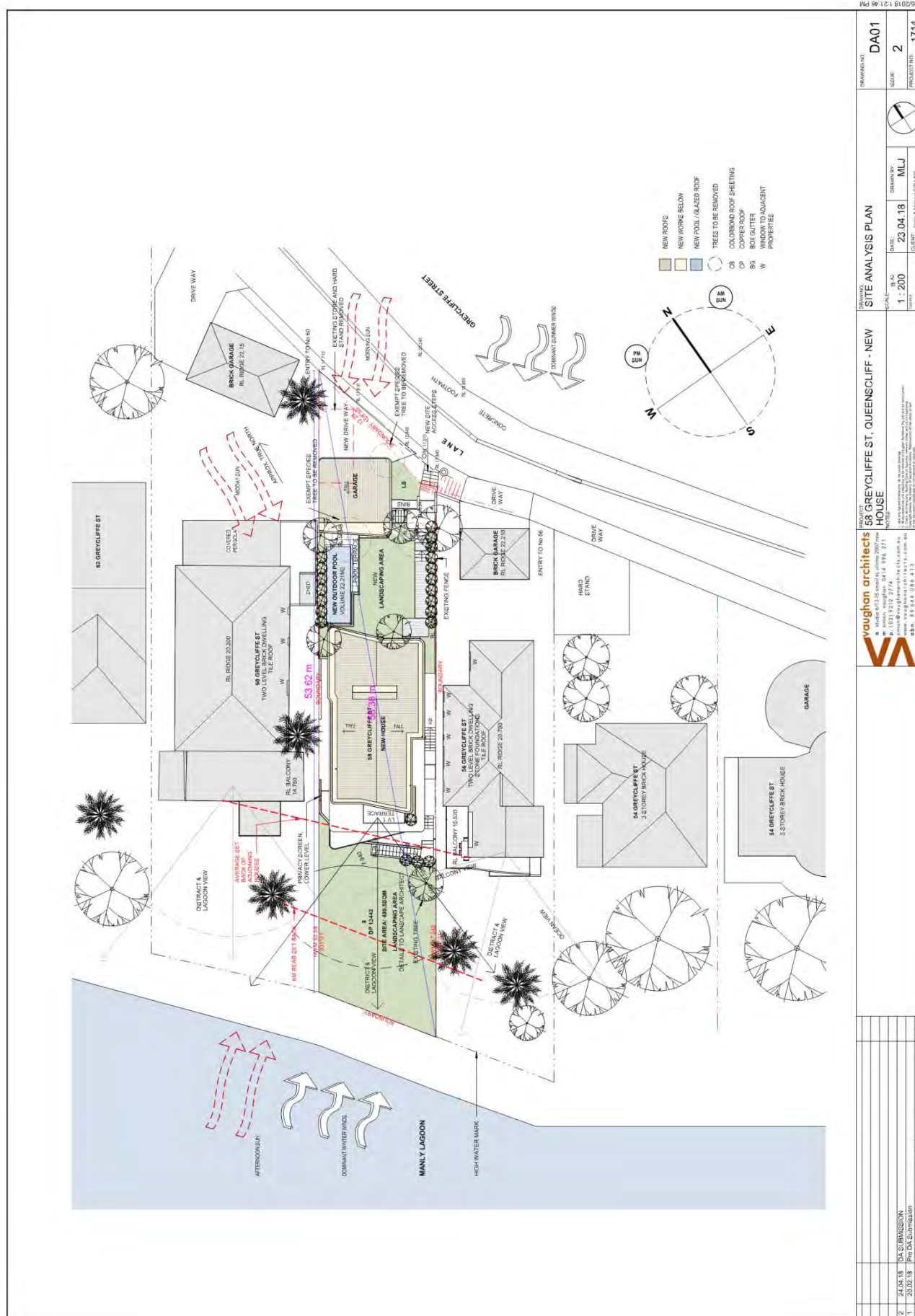


Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

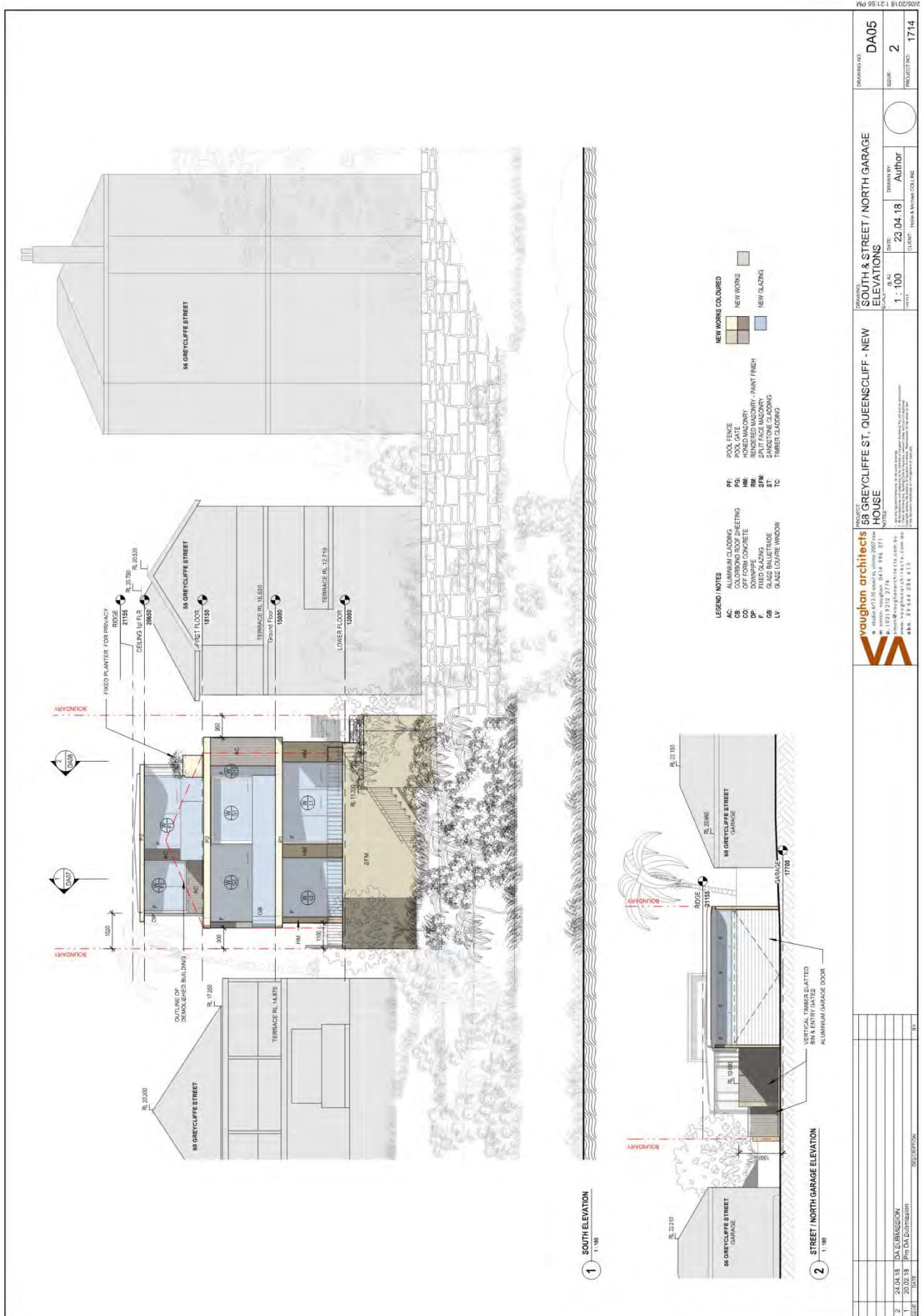
Reason: Weed management.

46. **Works to cease if Aboriginal Engravings or Relics 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.









ITEM 3.4	DA2018/0894 - 157 VICTOR ROAD, DEE WHY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	RODNEY PIGGOTT
TRIM FILE REF	2018/598748
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 **refuse** Development Application DA2018/0894 for alterations and additions to a dwelling house on land at Lot A DP 378435, 157 Victor Road, Dee Why subject to the conditions outlined in the Assessment Report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 26 September 2018

157 Victor Road Dee Why - Alterations and additions to a dwelling house

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0894
Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot A DP 378435, 157 Victor Road DEE WHY NSW 2099
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	Philip Martin Spencer Sophie Justine Spencer
Applicant:	Philip Martin Spencer
Application lodged:	29/05/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/06/2018 to 19/06/2018
Advertised:	Not Advertised
Submissions Received:	3
Recommendation:	Refusal
Estimated Cost of Works:	\$ 448,000.00

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - D2 Private Open Space
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D13 Front Fences and Front Walls
Warringah Development Control Plan - D15 Side and Rear Fences
Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot A DP 378435 , 157 Victor Road DEE WHY NSW 2099
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Victor Road.</p> <p>The site is regular in shape with a frontage of 15.24m along Victor Road and a depth varying between 37.41 and 36.5m. The site has a surveyed area of 563.7m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a split level two-story residential dwelling with a detached carport. An outbuilding is located in the rear yard.</p> <p>The site has a significant slope which falls down from the frontage on Victor Road to the rear boundary. The existing dwelling is located close to the frontage of the site on an existing bench of rock outcrops.</p> <p>The site is moderately vegetated, with two (2) mature trees</p>

DA2018/0894

Page 2 of 30



located on the front and rear of the site.

Adjoining and surrounding development is characterised by residential dwellings.

Map:



SITE HISTORY

A history of the site of relevance to the subject application includes the following:

DA2015/0860: Development Application for "alterations and additions to a dwelling house" withdrawn on 21 October 2015. The application was not supported by Council as insufficient information was provided to demonstrate the potential loss of views to adjoining properties and justify the noncompliance with the Building Height development standard in Warringah Local Environmental Plan 2011.

CDC2016/0518: Complying Development Certificate (CDC) application refused by Council on 17 September 2016. The application was refused because it did not comply with the following provisions/standards of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008:

- Number of storeys;
- Privacy;
- Maximum height; and
- Drainage.

S68A2017/0004: Approval issued for a stormwater disposal system to the existing dwelling on 28 March 2017, pursuant to Section 68 of the Local Government Act 1993.

CDC2017/0021: CDC issued for "Alterations and additions" on 5 April 2017, by Comcert Building Certifiers. A site inspection undertaken as part of the assessment of the current development application has confirmed that these works have not been physically commenced. This consent

DA2018/0894

Page 3 of 30



nonetheless remains valid.

DA2017/1048: Development Application for "Alterations and Additions" to the approved CDC2017/0021 comprising of an extension to the approved footprint forward of the building line.

Consideration was given and legal advice sought as to whether the mechanism of modifying an approved but unbuilt CDC plan through a Development Application was possible. The advice received did not favour the method of approval being sought by the applicant and the application was subsequently withdrawn on 8 March 2018.

DA2018/0894 - the current DA:

The current DA subject of this report was lodged with Council on 29 May 2018 following some initial discussions with Council.

Following the exhibition period of the application and a preliminary assessment, Council wrote to the applicant on 11 July 2018 requesting that the application be withdrawn due to inaccurate and inconsistent architectural plans and geotechnical report, and due to the view loss experienced by No. 154 Victor Road. In this letter Council stated that: *Council will not accept any additional information or amendments to this current application.*

A series of emails, meetings and phone calls followed the issuing of this letter, essentially for the purpose of the applicant understanding the ramifications of not withdrawing the application, and requesting the opportunity to submit additional information.

Council refused to accept additional information in accordance with the EPA Regs, but it should be noted that the applicant submitted a revised geotechnical report and revised architectural plans. This additional information has not been accepted.

The applicant advised that they will not be withdrawing the application and accordingly, an assessment of the application as lodged is discussed herein this report and presented to the Development Determination Panel for determination.

PROPOSED DEVELOPMENT IN DETAIL

The development seeks consent for the construction of a first floor addition atop of the existing dwelling house. In addition, the existing ground floor is to be extended and have a new balcony constructed, and a new stairwell is proposed to traverse the three levels of the dwelling.

The carport is proposed to be demolished and reconstructed to accommodate two cars.

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	None applicable.

DA2018/0894

Page 4 of 30



Section 4.15 Matters for Consideration	Comments
draft environmental planning instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(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>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 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 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 the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</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 Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or	See discussion on "Notification & Submissions Received" in this report.

DA2018/0894

Page 5 of 30



Section 4.15 Matters for Consideration ¹	Comments
EPA Regs	
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Dr Sek Cheong Kim Cheng	156 A Victor Road NARRAWEENA NSW 2099
Mr Robert George Graham Kirsten Dorothy Prince	154 Victor Road NARRAWEENA NSW 2099
Timothy Michael Powell Ms Frances Elizabeth Powell	159 Victor Road DEE WHY NSW 2099

During the exhibition period of this development application three submissions were received from adjoining properties.

Two of these three submissions were subsequently withdrawn, and accordingly there is only one submission remaining opposing the development application.

It is crucial to note that amenity impacts upon adjoining properties are considered and assessed regardless of whether a submission has been received from that property or not.

The matters raised in the one submission received includes the following:

- Built form non-compliances
- Inaccurate information
- View loss
- Building bulk
- Landslip risk

1. Built form non-compliances

The submission received raises concern regarding the impact of breaches to Clause 4.6 of the WLEP 2011, and to Part B1, B3 and B7 of the WDCP 2011.

Comment: Council's assessment has found that the breaches to Clause 4.6 and to Part B1, B3 and B7 are inconsistent with the objectives of the WDCP 2011 and are accordingly included as reasons for refusal of the application. These matters are discussed in detail in the latter of this report.



2. Inaccurate information

The submission received raises concern that the architectural plans provided are inaccurate as they do not show natural ground level (as per the survey provided) and show conflicting front setbacks of the proposed addition. The submission also notes that the Solar Access / Shadow Diagram drawings references a different development for an '800mm wide addition to an approved complying development and a new carport'.

Comment: Council's assessment of the application has found that insufficient detail is provided on the architectural plans submitted to undertake a detailed and accurate assessment of the application.

Accordingly, this matter is included as a reason for refusal.

3. View loss

The submission received raises concern that the development will cause adverse view loss ("devastating view loss") from No. 154 Victor Road.

Comment: Council's assessment of the application has found that the development will cause a degree of view loss from No. 154 Victor Road, which would otherwise be retained if the development were to comply with the requisite planning controls. A detailed discussion on view loss can be found in Part D7 of this report.

Accordingly, this matter is included as a reason for refusal.

4. Building bulk

The submission received raises concern that the development will be visually bulky and inconsistent with the streetscape as it provides "no articulation and does not respond to the topography of the site."

Comment: Council's assessment of the application has found that the development does not satisfy the objectives of Part D9 Building Bulk of the WDCP 2011.

Accordingly, this matter is included as a reason for refusal.

5. Landslip risk

The submission received notes that the geotechnical report submitted to accompany the application does not address the proposed development.

Comment: Council's assessment of the geotechnical report has found that it is outdated and refers to a completely different development on a different part of the site.

Accordingly, this matter is included as a reason for refusal.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The plans indicate retention of existing trees and rock outcrops. No objections are raised with regard to landscape issues, subject to conditions.

DA2018/0894

Page 7 of 30



Internal Referral Body	Comments
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following condition of consent.
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 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. A226459_05 dated 28 May 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).

DA2018/0894

Page 8 of 30



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

Comment: The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Approx. 14m*	Approx. 64.7%	No

*note: insufficient details were provided on the architectural plans submitted to accurately ascertain the complete height of the building. In the elevation and sectional drawings provided, the natural ground level and the fall in the north-eastern corner of the site are not shown, and therefore an accurate assessment of building height is unable to be completed. The figure of 14m is roughly extrapolated from the survey plan.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

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

Requirement:	8.5
Proposed:	Approx. 14m
DA2018/0894	Page 9 of 30



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	64.7% (5.5m)

Description of area of non-compliance

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

Is the planning control in question a development standard?

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

What are the underlying objectives of the development standard?

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

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

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

Comment: The presence of a dwelling that is part 2 / part 3 storey is not unique within the Victor Road streetscape, particularly on the eastern side of the street in the general area of the subject site. However, most of these part 2 / part 3 storey dwellings have been designed to step down the slope of the land, thereby minimising their visual presence from the streetscape. The development proposed does not step down the topography of the land and is a first floor addition atop of the existing dwelling (inter alia other works at ground level). This will result in a building that is higher than some surrounding dwellings, noting that there are larger and taller dwellings in the vicinity. The portion of the building that exceeds the building height standard will be substantially (over 5m) higher than the adjoining dwelling at 159 Victor Road.

Accordingly, it could be accurately surmised that the height and scale of the development is inconsistent and incompatible with surrounding and nearby development.

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

Comment: As detailed in the latter sections of this report under the WDCP 2011, the development is found to have adverse impacts on the provision of view sharing and results in a loss of privacy to adjoining dwellings and therefore does not satisfy this objective.

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

Comment: The development is not found to result in an adverse impact on the scenic quality of the Northern Beaches bush environment and therefore satisfies this objective.

d) to manage the visual impact of development when viewed from public places such as parks



and reserves, roads and community facilities.

Comment: The development is not found to have any adverse or unreasonable visual impact when viewed from any surrounding public places, and therefore satisfies this objective.

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 site will continue to cater for providing housing for the community.

It is considered that the development satisfies this objective.

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

Comment: The development is within a residential zone and accommodates a residential landuse.

It is considered that the development satisfies this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment: The site provides a satisfactory provision of landscaped open space in accordance with the requirements of Part D1 of the WDCP 2011. Accordingly, it is considered that the development is characterised by a landscaped setting.

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 WLEP 2011?

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

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

Comment: In consideration of whether an appropriate degree of flexibility to a development standard is warranted in the circumstances of the application reference must be made to the Planning Principle established in *Veloshin v Randwick Council [2007] NSWLEC 428 (Veloshin)* where Senior Commissioner Roseth established a framework of questions regarding the assessment of the height (and bulk) of a development:

- 1. Are the impacts consistent with impacts that may be reasonably expected under the controls?
- 2. Does the area have a predominant existing character and are the planning controls likely to maintain it?

DA2018/0894

Page 11 of 30



- 3. Is the proposal consistent with the bulk and character intended by the planning controls?
- 4. Does the proposal look appropriate in its context?

1. Are the impacts consistent with impacts that may be reasonably expected under the controls?

The anticipated impacts of a development can reasonably be derived from what is permitted on the land under the prevailing built form and Principal Development controls. Therefore, the view loss, visual bulk and opportunities for overlooking that are caused by the non-compliant north-eastern corner of the building are inconsistent with impacts that can reasonably be expected under the controls. That is, if the development were to comply with the requisite control, there would not be (or would be lesser) adverse view loss, visual bulk and opportunities for overlooking into adjoining properties.

Accordingly, the development does not satisfy test 1.

2. Does the area have a predominant existing character and are the planning controls likely to maintain it?

The Victor Street streetscape could be said to have a predominant existing character of multi-storey dwellings that are responsive to site topography (that is, stepping up or down the land). Whilst there are exceptions to this control where buildings have been constructed with no regard to the topographical constraints of the land, these are not the predominant character.

The current prevailing planning controls seek to have buildings within a certain envelope which, by nature of the site, requires the building to traverse the topography of the land. It is found that the prevailing typology of architecture in the street steps up or down the slope of the land, and therefore it can be considered that the planning controls are likely to maintain this predominant existing character.

3. Is the proposal consistent with the bulk and character intended by the planning controls?

From the streetscape, the proposed addition is consistent with the bulk and character intended by the planning controls. However from the adjoining properties to the north and south, the building is inconsistent with the bulk and character intended by the planning controls.

As elaborated upon later in this report, the northern facade of the building will be extremely visually dominating when viewed from the adjoining property, and this impact will be exacerbated by a deck orientated toward the side boundary. This visual domination is caused directly as a result of the building height and side boundary envelope breach.

The southern elevation of the building is of a much lesser visual dominance than the northern elevation, however it is still found that having a first floor blank planar facade with no windows or articulation is contrary to the bulk and character intended by the WDCP 2011.

Accordingly, the development does not satisfy test 3.

4. Does the proposal look appropriate in its context?

From the streetscape, it is considered that the proposed development could look appropriate in its context, despite being somewhat taller than other surrounding buildings. However, context goes beyond just the street presentation, and also relates to how the building will appear from surrounding properties (ie. those to the north and south). As described in detail above and elsewhere in this report, the development proposed is at odds with the bulk and character



intended by the planning controls as is evident through the magnitude of non-compliance sought by this proposal. There is also insufficient detail regarding the finish of the building to determine its contextual appropriateness (discussed later in the report).

Accordingly, it is considered that the proposal does not look appropriate in its context and does not satisfy test 4.

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

Comment: In the circumstances of this application it has been found that allowing flexibility or deviation to the planning controls (particularly cl. 4.3) does not equate to a better outcome. The non-compliance sought directly results in a worse outcome than what is envisaged by the controls and therefore the development does not satisfy this objective.

(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: In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (**Wehbe**) CJ Preseton formulated five methods in which a development standard can be shown to be unreasonable or unnecessary in the circumstances of a particular case.

The methods in *Wehbe* can be summarised as:

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (Method 1).
- 2. The underlying objective or purpose of the standard is not relevant to the development, and therefore compliance is unnecessary (Method 2).
- 3. The underlying objective or purpose would be thwarted if compliance was required and therefore compliance is unreasonable (Method 3).
- 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Method 4).
- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Method 5).

Clause 4.6 (3) requires the consent authority to consider a written request from the applicant that



seeks to justify the contravention to the development standard. The application is accompanied by a *Clause 4.6 Variation to Development Standard* dated 28 May 2018 by Chapman Planning Pty Ltd.

Below is Council's consideration of the applicant's written request to vary a development standard (extract p4):

- *The proposed 2 storey form is consistent with the built form in the locality noting the topography restricting a large floorplate design.*
- *The portion of the building exceeding the 8.5m height limit will not result in unnecessary building bulk noting the additional height is located at the rear of the site and building footprint is consistent with building located to north – 159 Victor Road, Dee Why. The upper level has been designed with a balcony on the northern façade.*
- *The additional height will not result in additional view loss noting the additional height is at the rear of the building and the dwelling presents to Victor Road as a two storey form, consistent with the intent of 8.5m height limit.*
- *The additional building height is located at north eastern corner of the building and will not generate unnecessary overshadowing to dwelling to south.*
- *The height of the building is consistent with adjoining dwellings and will not present overbearing bulk and scale when viewed from dwellings to the east. Further the additional height is confined to the north-eastern corner of built form visually recessed behind existing vegetation.*

It is concurred that a two storey form is consistent with some other buildings in the street, albeit most properties on the low-side of Victor Road step down the hill.

The assessment of this application has found that the portion of the building exceeding the height limit will present as excessively and overbearingly visually bulky from the the adjoining property at 159 Victor Road as the building will be approximately 5.5m higher than what is envisaged by the planning controls.

The assessment of this application has found that the development as a whole, including the portions of the building exceeding the height standard, will partially obstruct views presently enjoyed by surrounding properties, particularly from 154 Victor Road.

It is concurred that the development does not result in unreasonable overshadowing of adjoining properties and their private open space.

Given the topography of the land and the placement of the dwellings to the east, it is not considered that the building will be largely visible from these properties, however the development will present as an overbearing and unreasonable bulk and scale when viewed from 159 Victor Road.

In attempting to demonstrate that there are sufficient planning grounds to justify the contravention to the development standard, the author of the *Clause 5.6 Variation to Development Standard* report argues that the variation is resultant of the site topography, that the 2 storey form is consistent with other built form in the locality and the *intent of the 8.5m height limit*, that the height will not be seen from the street frontage and is screened by existing vegetation, and that the height breach will not caused any unnecessary overshadowing.

(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*

DA2018/0894

Page 14 of 30



demonstrated by subclause (3), and

Comment: The applicant's written request has addressed the matters required to be demonstrated by subclause (3), however Council does not concur with the assessment and finds that the development is contrary to the objectives of Clause 4.6.

(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: The proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone in the WLEP 2011.

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

Comment: Planning Circular PS 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 development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. Following the release of PS18-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for 12 months from 1 March 2018, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary the building height standard by more than 10%.

As the development seeks to vary a development standard by more than 10%, the application is to be determined by the Development Determination Panel.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	5.8m - 13.8m*	Up to 91.6%	No
B3 Side Boundary Envelope	North - 4m	Encroachment of approximately 3.2m - 8.2m in height for the length of the dwelling*	Up to 205%	No
	South - 4m	Encroachment at a height of 1m for the width of the dwelling*	Up to 25%	No
B5 Side Boundary Setbacks	North - 0.9m	Carport - 1m	-	Yes
		First floor - 1.8m	-	Yes
	South - 0.9m	1.4m	-	Yes
B7 Front Boundary Setbacks	6.5m	Courtyard and Carport - Nil	100%	No
		First floor - 5.8m / 6.3m / 6.4m**	10.8%	No
B9 Rear Boundary Setbacks	6m	20m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	51% (290m ²)	-	Yes

DA2018/0894

Page 15 of 30



*note 1: inaccurate detail is shown on the architectural plans to accurately ascertain the natural ground level on the site. Therefore, the above data and figures are extrapolated from the survey information provided.

**note 2: the architectural plans detail 3 different setback measurements to the proposed first floor. Inaccurate detail is provided to ascertain what the proposed setback is.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	No
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	No	No
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	No
D7 Views	No	No
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	No	No
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	No	No
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes

DA2018/0894

Page 16 of 30



Clause	Compliance with Requirements	Consistency Aims/Objectives
E10 Landslip Risk	No	No

Detailed Assessment

B1 Wall Heights

As per previous discussions earlier in this report, insufficient detail is provided to accurately ascertain the height of the building. From a review of the sectional drawings and extrapolation from these, the wall height of the development is considered to range between 5.8m to approximately 13.8m, thereby equating to a 91.6% variation to the 7.2m standard.

An assessment of the variation sought against the control objectives follows:

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

Comment: The proposed first floor addition will be visually dominating when viewed from the adjoining property to the north as it will tower some 8.57m and 14m above the height of balconies of No. 159 Victor Road, and some 4.69m above the highest ridge point of this building. This height is sufficient to cause adverse visual impact, and is further exacerbated by the lack of detail on the architectural plans pertaining to the proposed finished material of the exterior walls of the dwelling which only details that the colour will be 'light blue/grey'.

Additionally, the proposed southern facade of the first floor addition lacks any articulation or visual interest and is a blank 3m high, 8.3m wide wall with no openings, stepping, change of material which is considered to be a poor design outcome and contributes to excessive visual impact when viewed from adjoining properties.

Accordingly, the development is not found to satisfy this objective.

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

Comment: The proposed first floor addition will remain generally beneath the existing tree canopy level.

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

Comment: The provision of view sharing is discussed later in this report under Part D7.

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

Comment: The variation sought to the wall height control contributes to visual bulk, view loss and privacy impacts, all of which are discussed under their respective clauses later in this report.



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

Comment: The proposed addition does not propose any major excavation to the natural land form. The site is constrained by virtue of its sloping topography, particularly with the steep drop in the north-eastern corner. In order to comply with the requisite built form controls of the WDCP 2011, development is envisaged of responding to the topography of a site by stepping down the slope of the land in order to minimise non-compliance and excessive visual impact. Such is not the case for this application. This application seeks to retain the existing building footprint and build directly on atop of it. This design solution is not found to be a considered response to the site's topography and is not considered to satisfy this objective.

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

Comment: The proposed roof design, whilst simplistic, is a suitable form for the site and the zone.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and objectives of WDCP 2011 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B3 Side Boundary Envelope

The development seeks for variation to the requisite 4m side boundary envelope control, as detailed in the Built Form Control table of this report. An assessment of the development against the control objectives follows:

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

Comment: This objective is addressed elsewhere in this report.

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

Comment: The proposed development results in adverse privacy impacts by virtue of the inadequate spatial separation between buildings which would not exist if the development achieved greater compliance with the side boundary envelope control.

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

Comment: This objective is addressed elsewhere in this report.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

DA2018/0894

Page 18 of 30



B7 Front Boundary Setbacks

The development proposes a nil front boundary setback to the double carport and courtyard. This setback is contrary to the 6.5m requirement. An assessment of this variation against the control objectives follows:

- *To create a sense of openness.*

Comment: The proposed carport is open in design and is to replace the existing structure present on the site. Given the design of the carport, it is found to contribute to a sense of openness.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment: The presence of carports and garages at the front boundary is not uncommon within the streetscape given topographical constraints, and therefore, the proposed carport will maintain the existing visual continuity and pattern of buildings in the streetscape.

The architectural plans also detail a 'paved courtyard' south the the carport and located between the dwelling and the front property boundary. This courtyard has a nil setback to the front boundary and restricts opportunities for landscaping in the front setback area. This element of the proposal is found to be inconsistent with the pattern of buildings and landscaped elements in the streetscape and is therefore inconsistent with the prevailing visual continuity. Accordingly, the courtyard is not supported.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment: The proposed carport and the variation to the front boundary setback requirement will not detract from the visual quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment: The single storey carport structure will not detract from any provision of view sharing.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP 2011 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D2 Private Open Space

The development is for a dwelling house that accommodates more than 3 bedrooms, and therefore requires a minimum 60m² private open space with minimum dimensions of 5m.

The site analysis plan provided details 25m² private open space in the front courtyard, and an addition 17m² of private open space that appears to be in the kitchen of the dwelling.

The front courtyard cannot be considered as private open space as it is within the primary front building setback (requirement 5), and the kitchen is a separate use that cannot be suitably defined as private



open space.

Accordingly, as per the architectural plans provided, the development has no private open space. An assessment of the 100% variation sought to this control against the objectives follow:

- *To ensure that all residential development is provided with functional, well located areas of private open space.*

Comment: Whilst it is acknowledged that the topography of the site presents a constraint to development, the site is capable of being designed in a way that would afford a reasonable area and quantum of private open space that is functional and well located. The proposed areas of private open space (front courtyard and kitchen) are deficient of the minimum size, and are not considered to be functional or well located, and therefore do not satisfy this objective.

- *To ensure that private open space is integrated with, and directly accessible from, the living area of dwellings.*

Comment: The front courtyard is accessible from the primary living areas of the dwelling as well as bedrooms.

- *To minimise any adverse impact of private open space on adjoining buildings and their associated private open spaces.*

Comment: The areas of private open space shown on the architectural plans is not considered to have adverse impact on adjoining buildings.

- *To ensure that private open space receives sufficient solar access and privacy.*

Comment: The front courtyard private open space may receive sufficient solar access, but will not achieve adequate privacy given its location on the front boundary.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP 2011 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D6 Access to Sunlight

The shadow diagrams provided with the application appear to be relatively accurate, however the application is required to be accompanied by certification that the shadow diagrams are correct.

The certification provided to accompany the application relate to a "800mm wide addition to an approved comply development [sic] and a new carport".

This description does not match the works sought under this application, and therefore the certification provided is irrelevant.

Council cannot be satisfied that the shadow diagrams relate to the development and accordingly, there is insufficient information to assess compliance with Part D6 of the WDCP 2011 and this is included as a reason for refusal.

D7 Views

DA2018/0894

Page 20 of 30



An submission was received from an adjoining property at No. 154 Victor Road, objecting to the proposal on the principle of potential view loss.

In the context of the potential view loss to this property, the development is considered against the underlying Objectives of the Control as follows:

- To allow for the reasonable sharing of views.

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

The objecting property was visited by Council on 5 July 2018 for the purpose of undertaking a view loss inspection and to ascertain the views that are currently enjoyed from the property.

There views include:

- Ocean and horizon;
- Filtered views of Dee Why Lagoon;
- District and bushland views.

The views of the ocean and horizon are the most dominant and highly valued views that the property enjoys.

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

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

Comment to Principle 2:

The views enjoyed from No. 154 Victor Road are obtained over the front boundary of both Nos. 154 and 157, and are available from both a sitting and standing position. Standing views are moderately better than sitting views and afford slightly more water views.

3. Extent of impact

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued



because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment to Principle 3:

The views enjoyed from No. 154 Victor Road are obtainable from the front entertaining deck, primary living and dining room and the kitchen. The deck has the better views out of each of these spaces.

The development proposed at No. 157 Victor Road is for a first floor addition at a height greater than neighbouring dwellings. From knowing this and a review of the survey information, it is ascertainable that the proposal will block all water views for the width of the building. Some water views will still be obtainable on either side of the building.

In the context of the site and the provision of views that are obtainable, it is considered that the view loss caused by this development could be described as moderate to severe.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

As detailed elsewhere in this report, the proposed development seeks variation to a number of built form controls and Principal Development Standards. The level of non-compliance sought and the subsequent impacts that these non-compliances cause to adjoining properties leads to the considered opinion that a more skillful and more compliant design could achieve a better outcome in the circumstance of this site, whilst still providing the same amount of floor space to the occupants of the development.

The site is constrained by virtue of topography, however a site constraint is not a license to flaunt compliance with the requisite development controls. The site maintains adequate potential to be developed in an alternate fashion that would ameliorate view loss impacts and provide the same level of amenity to occupants of the development.

Accordingly, the proposed development is found to be unreasonable in this circumstance.

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

Comment: As detailed throughout this report, the design as proposed is not found to be an innovative design solution that will enhance the urban environment.

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

Comment: The application does not seek the removal of any canopy trees.



Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP 2011 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D8 Privacy

The proposed first floor balcony has a primary northern orientation onto the side boundary to No. 159 Victor Road.

The architectural plans show a 1.5m privacy screen along the northern edge of the balcony, and a submission that was received from No. 159 Victor Road objecting to privacy has been subsequently withdrawn.

Notwithstanding the above, the orientation of the balcony is considered unsuitable for the R2 zone as it will permit unobstructed and direct sightlines into the adjoining property and will severely impinge on the reasonable ability to develop this site in the future.

The siting of the balcony does not provide for a high level of visual privacy and is not considered to be an innovative design solution.

In this regard, the proposed balcony is found to be contrary to the objectives of Part D8 of the WDCP 2011 and is not supported.

D9 Building Bulk

An assessment of the development against the objectives of D9 Building Bulk follows:

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

Comment: The proposed development is a rectangular addition atop of an existing rectangular dwelling. The front facade of the dwelling is acceptable insofar as aesthetics are considered, however it could not be said that it is 'innovative architecture'. Despite this, the development satisfies this objective.

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

Comment: As discussed throughout this report, the north-eastern corner of the development which seeks to vary the wall height, side boundary envelope and height of buildings control is found to have a significant adverse visual impact upon the adjoining property to the north (159 Victor Road). The proposed addition will loom over the adjoining building and will appear overbearingly visually dominant. The design does not provide sufficient articulation to reduce visual dominance. Whilst a balcony has been proposed to provide some stepping in the design, the outcome is worse than a solid wall as it enables direct overlooking of the property.

Accordingly, the development is not considered to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP 2011 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not



supported, in this particular circumstance

D13 Front Fences and Front Walls

The ground floor level architectural plan accompanying the development application details 'remove unstable existing boundary walls and replace with new boundary fences and paving to courtyard.'

No detail is provided on the finish or height of the front boundary fence, and therefore this element of the proposal cannot be supported.

This element of the proposal is included as a reason for refusal, however if the Panel is of the opinion to approve the application, the front wall may be deleted via condition of consent.

D15 Side and Rear Fences

The ground floor level architectural plan accompanying the development application details 'remove unstable existing boundary walls and replace with new boundary fences and paving to courtyard.'

Insufficient detail is provided regarding the proposed southern boundary fence/wall to accurately ascertain the height and finish of the structure. Additionally, as the structure is on the property boundary, land owners consent of the adjoining property is required but has not been provided.

This element of the proposal is included as a reason for refusal as consent cannot be granted to a structure without land owners consent. The applicant may pursue this element of the proposal under the Dividing Fences Act 1993.

E10 Landslip Risk

The subject site is identified as being within Land Slip Risk Area B and in accordance with the WLEP 2011, must submit a Preliminary Geotechnical Report to assess the site conditions.

The application is accompanied by a Geotechnical Assessment by D. Katauskas dated 16 December 2014.

The date of this report (over 3 years old) is found to be unsatisfactory and may not accurately portray the current site conditions.

Additionally, the report specifically states that its purpose is for: *assessing the hillside stability and the effect on the same of the proposed construction of separate accommodation space at the approximate location currently occupied by a metal-roofed shed.*

This description does not match the works sought under this application, and references a different portion of the site than the dwelling house.

In this regard, Council cannot be satisfied that the development will be geotechnically stable and will not cause adverse impact. Accordingly, the application is not found to have sufficient information to access the requirements of Part E10 of the WDCP 2011.

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.

CONCLUSION

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

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

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

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

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

The subject site has an extensive history of development applications and complying development applications as detailed in the Site History section of this report. This history and the existence of a current (but not constructed) complying development certificate is irrelevant to the assessment of this current application.

The works sought as a part of this application include the reconstruction of a carport, reconfiguration and minor enlargement of the existing ground level, and the construction of a first floor addition.

This Assessment Report details that the development seeks to significantly vary numerous built form controls of the WDCP 2011 and Clause 4.3 Height of Buildings of the WLEP 2011. These variations then equate to issues of building bulk, privacy etc.

In addition to these unacceptable variations, the application is accompanied by incomplete, irrelevant and incorrect information including the architectural plans, geotechnical report and the certification of shadow diagrams.

A preliminary review of the application did not reveal the full extent of issues with the proposal, but did provide sufficient justification for Council to request the application be withdrawn. In requesting to withdraw, Council offered the applicant a refund of a portion of the development application fees. The opportunity to submit additional information was not provided given the extent of non-compliance and the erroneous nature of documentation provided. The procedure followed is consistent with the



Northern Beaches Council DA Management Policy.

Extensive correspondence with the applicant was held in the form of meetings, phone calls and emails throughout the assessment of the application. Council remained firm on its position of not accepting additional or revised information but despite this, the applicant provided a revised design and a revised geotechnical report. These revised pieces of information are noted for the purpose of this report, but have not been considered in the assessment of this application.

In summary, there is insufficient information provided to warrant the approval of the application. In the event that all information provided was sufficient, the design proposed is unreasonable for the site by virtue of the level of non-compliance proposed and the detrimental impacts the design will have upon the amenity of surrounding properties.

The application is to be determined by the Development Determination Panel as it seeks to vary a Development Standard by more than 10%.

For the reasons outlined in this report, the application should be refused.

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2018/0894 for the Alterations and additions to a dwelling house on land at Lot A DP 378435,157 Victor Road, DEE WHY, for the reasons outlined as follows:

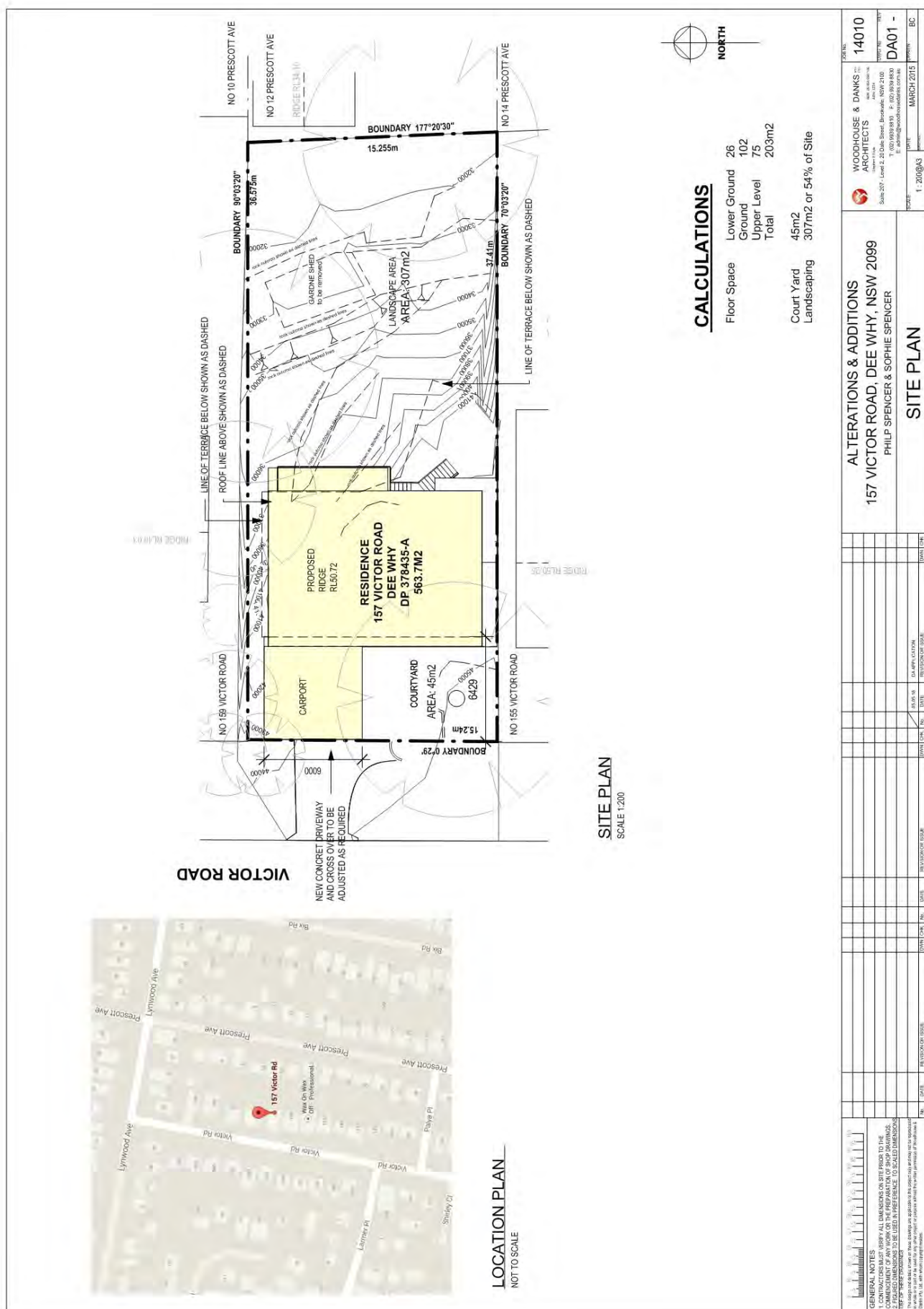
1. Pursuant to Schedule 1 of the Environmental Planning and Assessment Regulation 2000 the proposed development is not accompanied by satisfactory architectural plans to enable a proper assessment of the application.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B1 Wall Heights of the Warringah Development Control Plan 2011.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B3 Side Boundary Envelope of the Warringah Development Control Plan 2011.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B7 Front Boundary Setbacks of the Warringah Development Control Plan 2011.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D2 Private Open Space of the Warringah Development Control Plan 2011.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D6 Access to Sunlight of the Warringah Development Control Plan 2011 as insufficient information is provided.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D7 Views of the Warringah Development Control Plan 2011.

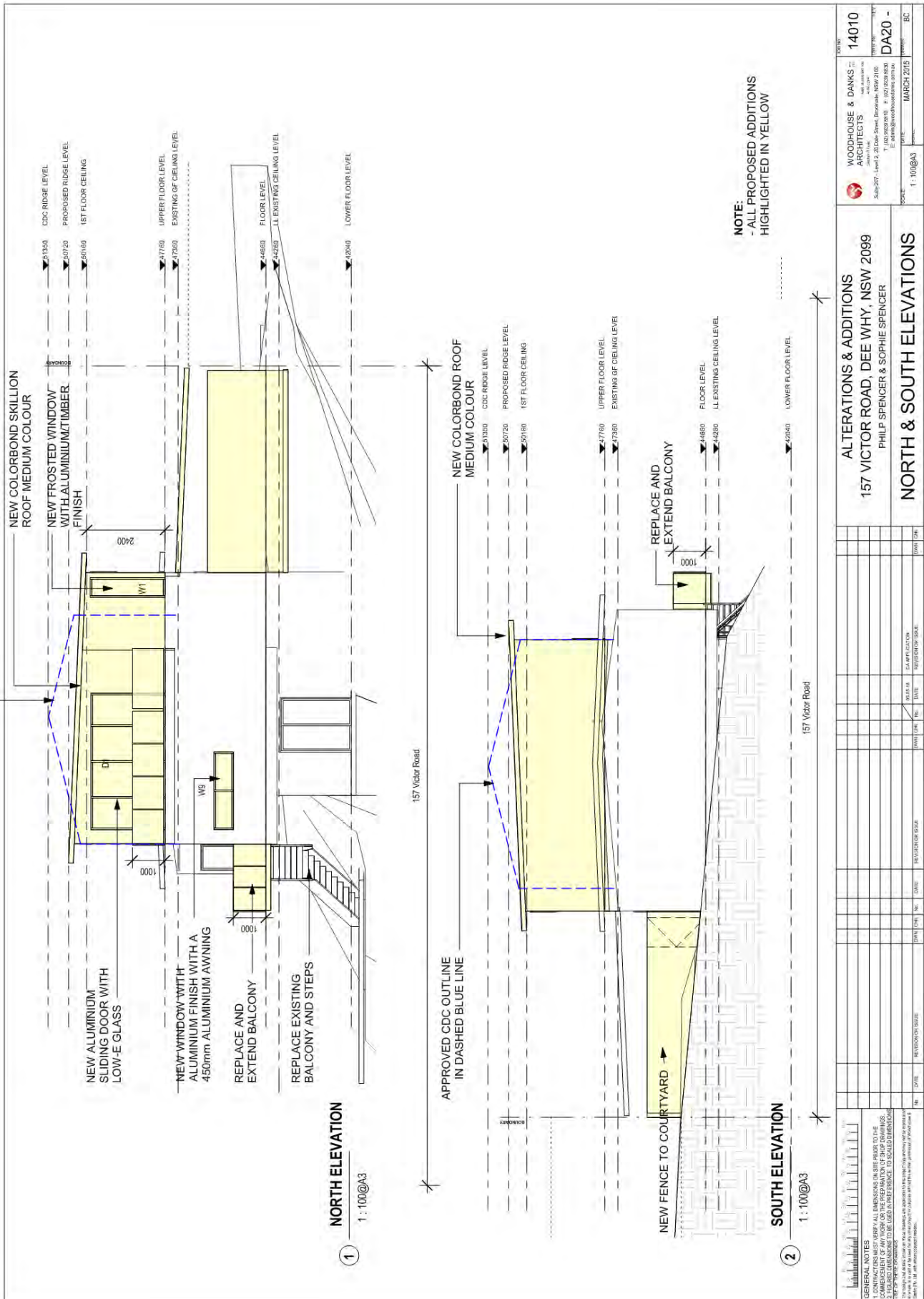
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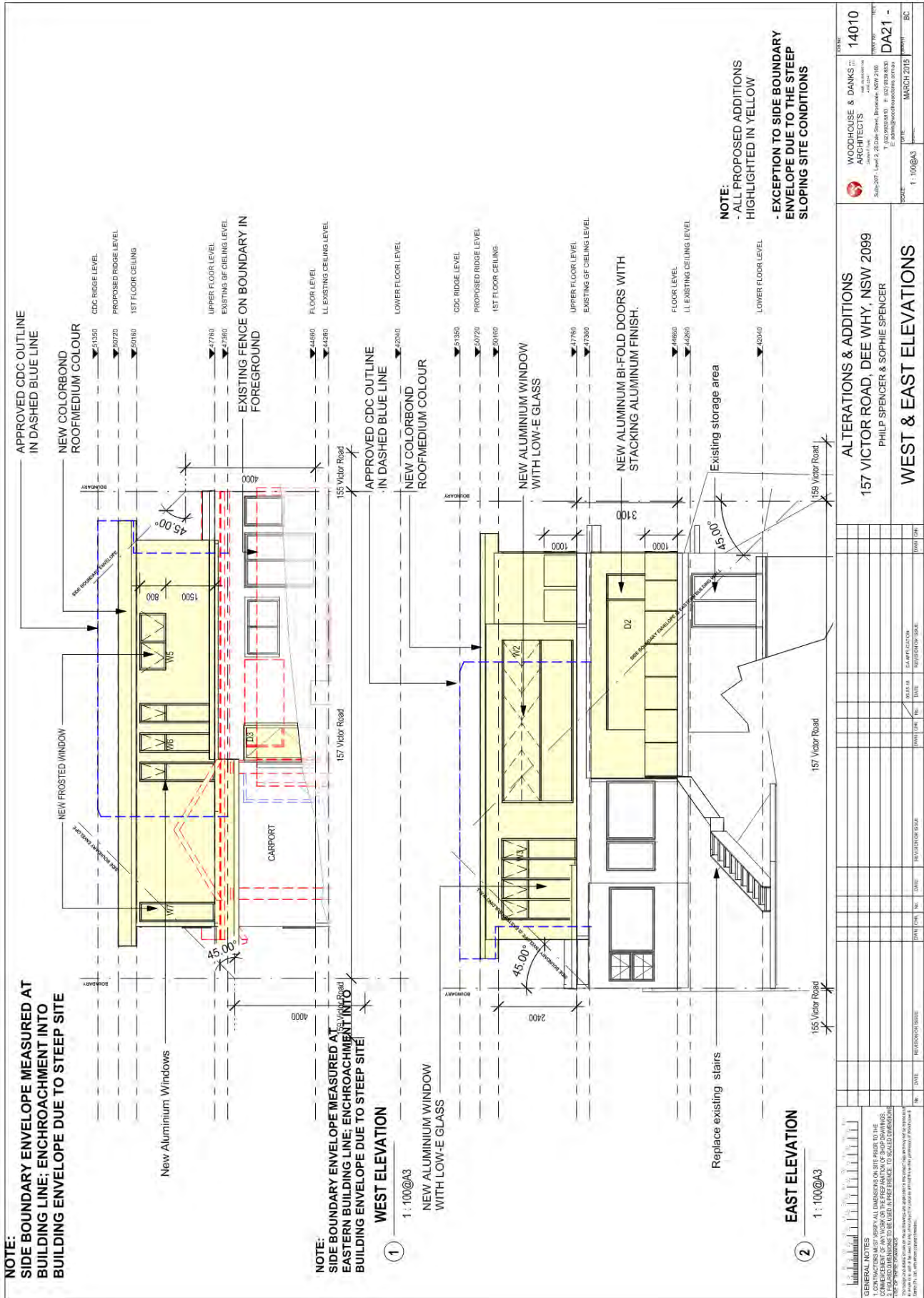
Page 26 of 30



8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause D8 Privacy of the Warringah Development Control Plan 2011.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan 2011.
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D13 Front Fences and Walls of the Warringah Development Control Plan 2011.
11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D15 Side and Rear Fences of the Warringah Development Control Plan 2011.
12. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause E10 Landslip Risk of the Warringah Development Control Plan 2011 and does not provide sufficient information to assess the geotechnical stability of the land.







ITEM 3.5

**DA2018/0570 - 10 MOUNTVIEW PLACE, BILGOLA PLATEAU -
CONSTRUCTION OF A NEW DWELLING HOUSE INCLUDING
THE RETENTION
OF A SUBSTANTIAL PORTION OF THE EXISTING DWELLING
HOUSE**

REPORTING MANAGER**ANNA WILLIAMS****TRIM FILE REF****2018/598903****ATTACHMENTS**

- 1 Assessment Report**
- 2 Site Plan and Elevations**
- 3 Clause 4.6 Report**

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 DA2018/0570 for Construction of a new dwelling house including the retention of a substantial portion of the existing dwelling house on land at Lot 42 DP 236798, 10 Mountview Place, Bilgola Plateau, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0570
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 42 DP 236798, 10 Mountview Place BILGOLA PLATEAU NSW 2107
Proposed Development:	Construction of a new dwelling house including the retention of a substantial portion of the existing dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Kenneth Harrie Barnwell Patricia Anne Barnwell
Applicant:	Patricia Anne Barnwell
Application lodged:	11/04/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	18/04/2018 to 02/05/2018
Advertised:	Not Advertised
Submissions Received:	5
Recommendation:	Approval
Estimated Cost of Works:	\$ 250,000.00

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) 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 - A4.3 Bilgola Locality
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.12 Waste and Recycling Facilities
Pittwater 21 Development Control Plan - D3.7 Side and rear building line
Pittwater 21 Development Control Plan - D3.14 Construction, Retaining walls, terracing and undercroft areas

SITE DESCRIPTION

Property Description:	Lot 42 DP 236798 , 10 Mountview Place BILGOLA PLATEAU NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Mountview Place.</p> <p>The site is irregular in shape with a frontage of 16.3m along Mountview Place and an average depth of 30m. The site has a surveyed area of 695.6m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a three-storey detached dwelling.</p> <p>The site steeply slopes from north to south, with significant vegetation in the rear yard to the south.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one-, two-, and three-storey detached dwellings.</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:

- N0564/15 for alterations and additions to the existing dwelling was withdrawn by the applicant on 4 May 2016 as recommended by staff due to:
 - Incorrect description of the development (considered to be new dwelling by Council staff);
 - Non-compliances (height of building, side building line, building envelope, landscaped area); and
 - Unacceptable view sharing, solar access, visual privacy, and stormwater management impacts.
- N0447/16 for construction of a new dwelling was refused under staff delegation on 5 May 2017 due to:
 - Non-compliances (height of building, landscaped area); and
 - Unacceptable view sharing and solar access impacts.
- N0356/17 for construction of a new dwelling including the retention of a substantial portion of the existing dwelling was recommended for approval by staff subject to several design changes through conditions of consent, but refused by the Northern Beaches Local Planning Panel (NBLPP) on 7 March 2018 due to:
 - Unacceptable impact in terms of solar impact, visual bulk and privacy to properties to the south, particularly from retention of the level 1 (basement) undercroft area and increase in the width of level 2 (ground floor level);
 - Increase in bulk to the east resulting in an unacceptable level of view sharing from Mountview Place and from the property at 1A Mountview Place; and
 - In relation to the height development standard the Panel is not satisfied as to the matters prescribed by clause 4.6(4)(a) of the Pittwater Local Environment Plan 2014.

The proposed development under this application DA2018/0570 responds to the reasons for refusal of N0356/17 as follows:

Solar Access:

The NBLPP were not satisfied that the proposal provided reasonable solar access to the properties to the south. The steep slope of the site allows for the site's solar access impact to be assessed based on merit (i.e. based on the outcomes of the control) rather than the numerical requirement. As demonstrated below, the proposal makes a number of amendments to reduce the bulk of the proposed development beyond the previous proposal, and therefore reduce the overshadowing impact from the previous proposal. Further to this, the proposal demonstrates compliance with the relevant P21 DCP built form controls, with the exception of the rear building line to the ground floor alfresco verandah, which does not result in unreasonable overshadowing. While the proposal continues to include a portion of non-compliance with the height of building development standard within Clause 4.3 of the PLEP 2014, this non-compliance is reduced from that proposed previously. The current proposal in fact results in portions of gained solar access for the properties to the south due to the amendments at the first floor level. The additional overshadowing to the south is as a result of the width of the ground floor. However, the ground floor width has been reduced from the previous proposal and is compliant with building envelope and side building line controls. Aside from numerical compliance, the steep topography of site and locality means overshadowing to the properties to the south is exacerbated, and the properties to the south are inherently far more vulnerable to overshadowing than sites with flatter topography. As such, strict adherence to the numerical requirements in relation to solar access would unreasonably restrict development on the subject site. The current proposal demonstrates that amendments have been made to respond to the concerns regarding solar access.

Visual Bulk:

The NBLPP were not satisfied that the proposal was of appropriate visual bulk. The current proposed remains to appear from Mountview Place as a two-storey dwelling house, and appears from Cheryl Crescent as a similar bulk and scale to the existing dwellings on site and the adjacent sites on each side (being three storeys). The proposal is now compliant with site coverage, demonstrating that the proposal has an acceptable building footprint. The proposal is also compliant with all other built controls under the P21 DCP, with the exception of the rear building line to the ground floor rear alfresco terrace space, which is 6.2m from the rear boundary where 6.5m is required. However, this does not result in any unreasonable impacts to the subject site or adjacent sites. Further, the development has been amended to reduce visual bulk from the previous proposal in the following ways:

- Reduced basement area, and therefore reduced reliance on excavation;
- Reduced ground floor width by 1.7m - subsequent eastern side setback increased to 4m;
- Reduced first floor width by 330mm;
- Reduced ridge height by 100mm;
- Reduced ground floor depth by 140mm;
- First floor shifted north by 200mm;
- Additional glazing to the ground floor alfresco area to reduce bulk and increase solar access through; and
- Screen planting along the undercroft area to screen its visual impact.

While each of these amendments is relatively minor in nature, the cumulative impact of these amendments results in a more reasonable development and demonstrates that the proposal responds to the concerns regarding visual bulk.

Privacy:

The NBLPP were not satisfied in relation to overlooking from the proposed deck to the properties to the south. The proposal now employs a non-trafficable portion of the verandah areas at the ground and first floor levels. These non-trafficable portion act as ledges that jut out to prevent overlooking down to the slope to the properties to the south. As such, direct viewing is mitigated in accordance with Clause C1.5 Visual Privacy of the P21 DCP. The proposal demonstrates that amendments have been made in response to the concerns regarding visual privacy.

View Sharing:

The NBLPP were not satisfied that the proposal demonstrated adequate view sharing in relation to the view corridor currently available to 1A Mountview Place along the eastern boundary of the subject site. In response, the width of the ground floor (predominantly responsible for the view loss) was reduced, thereby increasing the eastern side setback to 4m. Further, the Assessing Officer has recommended a condition of consent requiring the existing hedging along the eastern boundary of the subject site to be trimmed and maintained to a maximum of 1m in width, in order to retain the view corridor. This is in accordance with the request from the objector at 1A Mountview Place, and has been agreed to by the Applicant. The proposal demonstrates that amendments have been made in response to the concerns regarding view sharing.

Clause 4.6 Application:

The NBLPP were not satisfied with the proposal in relation to the matters at Clause 4.6(4)(a) of the PLEP 2014. In relation to Clause 4.6(4)(a)(i), the submitted Clause 4.6 application demonstrates how compliance is unreasonable and therefore unnecessary in this case, and that there are sufficient environmental planning grounds justifying the contravention, as follows:

- The proposed development has a reduced ridge height from the existing dwelling;
- The proposal includes reductions in the bulk of the dwelling from the previous proposal;
- Strict compliance with the 8.5m development standard unreasonably hinders development on the site due to the steep slope, which is greater than 30%;
- The proposal results in a similar visual impact on the streetscape to the existing development and to surrounding developments in the locality;
- The proposed dwelling is of comparable bulk and scale to the existing dwelling and to surrounding developments in the locality, being two- and three-storey dwellings with similar building footprints;
- The proposal is stepped with the topography of the land, and does not rely on significant earthworks, instead employing pier and beam construction (as encouraged by Clause D3.14 of the P21 DCP); and
- The majority of overshadowing to the properties to the south is due to the ridge of the dwelling, which is compliant with the height of building development standard. The portion of non-compliant height of the proposed dwelling is set below and to the south of the proposed ridge height, and therefore does not result in unreasonable overshadowing.

In relation to Clause 4.6(4)(a)(ii), the submitted Clause 4.6 application demonstrates that the proposal is consistent with the objectives relevant to the zone and the development standard, and is therefore in the public interest, as detailed in the section of this report relating to Clause 4.6 of the PLEP 2014.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the construction of a new dwelling, including the partial retention of the existing dwelling.

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
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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 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 matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <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 process council is in receipt of 5 submission/s from:

Name:	Address:
Ms Deborah Kaye Anderson	68 Cheryl Crescent NEWPORT NSW 2106
Debbie Anderson	2 Mountview Place BILGOLA PLATEAU NSW 2107
Mrs Sarah Wallace	1 A Mountview Place BILGOLA PLATEAU NSW 2107
Mr Michael James Wallace	1 A Mountview Place BILGOLA PLATEAU NSW 2107
Judy Malcolm Mr Paul Louis Malcolm	70 Cheryl Crescent NEWPORT NSW 2106

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

- Overshadowing impacts to properties to the south

- Visual privacy impacts
- Drainage/stormwater impacts
- View loss impacts to No. 1A Mountview Place, due to development and landscaping
- Boundary fencing
- Issues with plans - no roof plan, no RL provided of roof above proposed laundry, dining room, kitchen and meals room.
- Visual impact from Cheryl Crescent
- Noise impacts to properties on Cheryl Crescent
- Concern about lack of planting to prevent run off issues

The matters raised within the submissions are addressed as follows:

- Overshadowing
Comment:
The proposed development is acceptable in relation to overshadowing for the reasons detailed in the section of this report relating to Clause C1.4 Solar Access of the Pittwater 21 DCP 2014.
- Visual Privacy
Comment:
The proposed development is acceptable in relation to visual privacy for the reasons detailed in the section of this report relating to Clause C1.5 Visual Privacy of the Pittwater 21 DCP 2014.
- Drainage / Stormwater and Planting to Prevent Runoff
Comment:
The proposal demonstrates adequate stormwater, drainage and landscape arrangements. The application has been reviewed by Council's Development Engineer, who raised no objections to the proposal.
- View Loss
Comment:
The proposed development is acceptable in relation to view sharing for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the Pittwater 21 DCP 2014.
- Boundary Fencing
Comment:
No changes are proposed to the existing boundary fencing.
- Plans
Comment:
While no roof plan was provided with the application, the proposed roof form can be adequately established through the submitted plans. The RL to the western portion of the roof above the ground floor is detailed on Drawing 1510.1327.03 Elevations Issue C dated 3 April 2018, being RL129.31. Adequate detail is provided to establish with relative accuracy that the RL of the eastern portion the roof above the ground floor is RL129.5. Adequate detail has been provided on plans to form a full assessment of the application.
- Visual Impact
Comment:

The proposed development is compliant with all built form controls within the Pittwater 21 DCP 2014, excluding a minor breach to the rear building line control. The rear building line breach is acceptable for the reasons detailed in the section of this report relating to Clause D3.7 Side and Rear Building Line of the Pittwater 21 DCP 2014. The proposed height of the development is acceptable for the reasons detailed in the section of this report relating to Clause 4.6 of the Pittwater LEP 2014. As such, the bulk and resultant visual impact of the development are acceptable.

- Noise Impacts

Comment:

The proposed development is compliant with Clause C1.6 of the Pittwater 21 DCP 2014. Further, the trafficable portion of the decks to the rear are compliant with the rear building line control, thereby demonstrating that the main usable portions of the development (that is, those most likely to result in noise) are adequately set back from the properties to the south.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The landscape outcome of the proposal is acceptable, subject to completion of landscaping and protection of existing vegetation proposed for retention.
NECC (Bushland and Biodiversity)	Bushland and Biodiversity raise no objection to the proposal, subject to recommended conditions of consent.
NECC (Development Engineering)	The increase in impervious area does not warrant OSD in accordance with Pittwater DCP. No development engineering objection is raised to the proposed development subject to 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.

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. A312276 dated 3 April 2018).

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.

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	9.52m	12%	No

Compliance Assessment

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

Detailed Assessment

4.3 Height of buildings

Clause 4.3(2D) of the PLEP 2014 provides that:

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

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and*
- (b) the objectives of this clause are achieved, and*
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

Clause 4.3(2D) is addressed as follows:

In regards to (a) above, the portion of the development above the 8.5m maximum building height is not considered minor, being the length of the southern edge of the development at the uppermost floor.

In regards to (b) above, the objectives of Clause 4.3 are achieved, as demonstrated throughout this report.

In regards to (c) above, the portion of the site being developed has a slope of 20.2 degrees (36.79%), being greater than 16.7 degrees (30%).

In regards to (d) above, the proposal includes minimal additional earthworks, thereby taking into account the slope of the land and minimising the need for cut or fill. Further, the uppermost floor is stepped back from the rear boundary, thereby reducing the height of the development at the rear, in accordance with the slope of the land.

As the proposal does not satisfy part (a) of Clause 4.3(2D) the 10m maximum building height variation does not apply in this case. The application is subsequently considered in accordance with Clause 4.6 Exceptions to development standards, under the 8.5m height of building development standard.

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:	9.52m
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%

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:

(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 proposed development is for the purpose of a new dwelling house with retention of a portion of the existing dwelling. Existing development surrounding the subject site is of a similar bulk and scale, being predominantly two- and three-storey detached dwellings with similar building footprints. Additionally, the proposal includes a number of amendments to the proposed built form from the previous development application on site, which assist in reducing the overall bulk of the dwelling, including:

- Reduced basement size, and therefore reduced amount of excavation;
- Reduced width of ground floor to allow for 4m eastern side setback (which allows for retention of the view corridor from the north);
- Reduced width of first floor by 330mm;
- Ridge height reduced 100mm from existing;
- Reduced depth of ground floor by 140mm;
- First floor shifted north 200mm;

As such, the proposed development is consistent with the desired character of the locality in relation to height and scale.

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

Comment:

As above, the nearby development consists of two- and three-storey detached dwellings of a similar building footprint to the proposed development, and the proposal includes a number of amendments from the previous proposal in order to reduce the scale of the dwelling. As such, the proposed height and scale of the proposed development is consistent with the height and scale of nearby development.

c) to minimise any overshadowing of neighbouring properties

Comment:

The proposal is assessed as acceptable in relation to overshadowing for the reasons detailed in the section of this report relating to Clause C1.4 Solar Access of the P21 DCP.

d) to allow for the reasonable sharing of views

Comment:

The proposed development is acceptable in relation to sharing of views for the reasons detailed in the section of this report relating to Clause C1.3 of the P21 DCP 2014.

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

Comment:

The proposed development is designed to respond sensitively to the natural topography in that it does not require significant earthworks and instead employs pier and beam construction (as encouraged by Clause D3.14 Construction, Retaining walls, terracing and undercroft areas of the P21 DCP). Further, the height of the proposed development steps back with the topography of the land.

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

Comment:

The proposed development is generally compliant with built form controls (with the exception of height of building and rear setback) and therefore does not result in unreasonable visual impact on the natural environment. The subject site and adjacent sites are not heritage listed, nor within heritage conservation areas.

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.

The underlying objectives of the E4 Environmental Living zone

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

Comment:

The proposal development results in a residential development of similar bulk and scale to the existing dwelling, and dwellings in the surrounding area. The proposal is low-impact in that a portion of the development (at the lower levels) is retained and the proposed new works do not require significant earthworks, nor result in unreasonable impacts to the subject site or adjacent sites.

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

Comment:

The proposed development does not unreasonably impact on the ecological, scientific or aesthetic values of the area, as it is consistent with the character, bulk and scale of existing surrounding development, does not involve unreasonable earthworks, and does not unreasonably impact on the amenity of the subject site or adjacent sites.

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

Comment:

The proposed development is integrated with the landform and landscape in that it generally limits excavation to a minor portion at the basement level for the proposed store room and powder room. The proposal otherwise uses pier and beam construction (as encouraged by Clause D3.14 Construction, Retaining walls, terracing and undercroft areas of the P21 DCP).

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

Comment:

The subject site does not contain riparian land or foreshore vegetation. The subject site is adequately sited in order to minimise impacts on wildlife corridors.

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 proposed development provides for an appropriate level of flexibility in applying the height of buildings development standard.

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

Comment:

The proposed development results in a better outcome, as it allows for additional living space for the subject sites within the same number of storeys, while resulting in a comparable overshadowing impact to that of dwelling compliant with the 8.5m height of building development standard. Supplementary shadow diagrams submitted by the Applicant demonstrate the impact a development with a compliant 8.5m height of building would have. The shadow created by the portion of non-compliant height does not fall to the private open space of the dwellings to the

south, and is anticipated to fall on the rooves of the properties to the south, rather than to windows to habitable rooms within those dwellings. As such, the impact of the proposed development over a development compliant with the maximum height of building is not drastically different and is not unreasonable. The overshadowing impact is predominantly due to the width of the dwelling, which is compliant with the side building line and building envelope controls.

(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 a written request justifying the contravention of the height of building development standard, included as an Attachment to this Assessment Report.

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

(a) the consent authority is satisfied that:

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

Comment:

The applicant's written request has adequately addressed the relevant matters. The written response demonstrates that compliance with the development standard is unreasonable and therefore unnecessary, and that there are sufficient environmental planning ground to justify contravening the development as follows:

- The proposed development has a reduced ridge height from the existing dwelling;
- The proposal includes reductions in the bulk of the dwelling from the previous proposal;
- Strict compliance with the 8.5m development standard unreasonably hinders development on the site due to the steep slope, which is greater than 30%;
- The proposal results in a similar visual impact on the streetscape to the existing development and to surrounding developments in the locality;
- The proposed dwelling is of comparable bulk and scale to the existing dwelling and to surrounding developments in the locality, being two- and three-storey dwellings with similar building footprints;
- The proposal is stepped with the topography of the land, and does not rely on significant earthworks, instead employing pier and beam construction (as encouraged by Clause D3.14 of the P21 DCP); and
- The majority of overshadowing to the properties to the south is due to the ridge of

the dwelling, which is compliant with the height of building development standard. The portion of non-compliant height of the proposed dwelling is set below and to the south of the proposed ridge height, and therefore does not result in unreasonable overshadowing.

(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 E4 Environmental Living zone in the PLEP 2014. The applicant has adequately demonstrated that the proposal is consistent with the objectives within the development standard and the zone.

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

Comment:

Planning Circular PS 17-006 dated 15 December 2017, as issued by the NSW Department of Planning and Environment, 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%. As per written correspondence to Council from the NSW Department of Planning and Environment dated 1 March 2018, concurrence may also be assumed for variations to the Height of Building Development Standard for dwelling houses, for 12 months from the date of the letter. 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 Height of Building Development Standard is assumed.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	6.5m	N/A	Yes
Rear building line	6.5m	6.2m	4.6%	No
Side building line	2.5m	4m (east)	N/A	Yes
	1m	1m (west)	N/A	Yes
Building envelope	3.5m	Within envelope	N/A	Yes
	3.5m	Within envelope	N/A	Yes
Landscaped area	60%	63%	N/A	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - 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
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	No	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
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	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
C1.23 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	Yes	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

A4.3 Bilgola Locality

The proposed development includes three storeys, where the locality calls for two storey development. However, the existing development includes three storeys, being ground and first floors, and a

basement. The proposed development involves minimal environmental impact, is set below the general tree canopy height, is lower than the existing ridge height (due to flattening of roof pitch), includes building modulation to minimise bulk, and provides an appropriate balance between respecting the landform and encouraging development. Further, the proposed dwelling presents to the streetscape as two storeys. As such, the proposed development achieves the intention of the desired character of the area and is acceptable in this regard.

C1.3 View Sharing

The proposal has received an objection in relation to view loss to No. 1A Mountview Place, to the north of the subject site. The proposed development is considered against the outcomes of the control as follows:

A reasonable sharing of views amongst dwellings. (S)

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

Nature of the views affected

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

Comment to Principle 1:

The view affected is a corridor from No. 1A Mountview Place through to the ocean, Mona Vale, and headland. The view includes the interface between the land and water, and the ocean horizon, but does not include any icons. The view is a corridor between the existing dwelling and existing hedging on the subject site.

What part of the affected property are the views obtained

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

Comment to Principle 2:

The view is obtained across the front boundary of No. 1A, over the front and rear boundaries of the subject site. The view is obtained from standing and seated positions from the the entry porch, the living room, the balcony behind the living room, and the bedroom. The view from the bedroom includes an additional corridor view to the east of the existing vegetation. See photos below of the view from each available location:



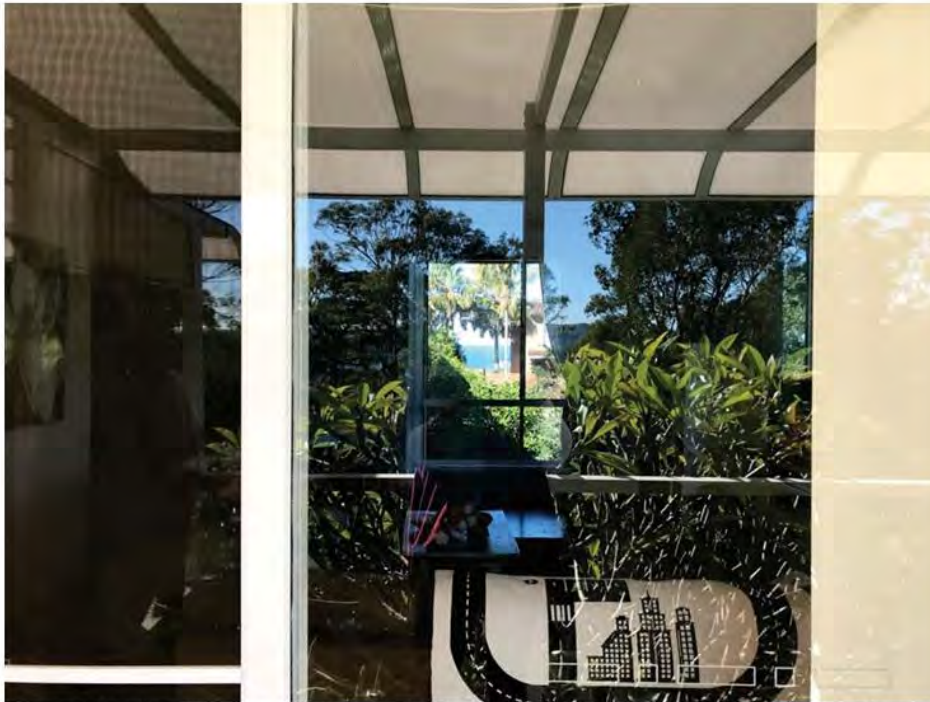
Above: Standing view from the entry porch of No. 1A Mountview Place.



Above: Standing view from the living room window of No. 1A Mountview Place.



Above: Standing view from the far end of the living room of No. 1A Mountview Place.



Above: Standing view from the balcony behind the living room of No. 1A Mountview Place.



Above: Standing view from the bedroom window of No. 1A Mountview Place.

Extent of impact

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

Comment to Principle 3:

The proposed development is likely to result in the partial loss of the corridor view from the entry porch, the living room, and the balcony behind the living room, including views to the headland. The view is most valued from the living room. While the view includes the interface between the ocean and land, the horizon and the headland, the view is a corridor only, is distant and is interrupted by existing development and vegetation. As such, the view loss is considered minor.

Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposed development is compliant with the built form controls within the Pittwater 21 DCP 2014, with the exception of a minor encroachment to the rear building line, as a result of the ground floor balcony, which does not result in any view loss. The proposed height of building non-compliance (which is acceptable for the reasons detailed in the section of this report relating to Clause 4.6 of the Pittwater LEP 2014) is set to the rear of the development. As such, the view loss is not as a result of any non-compliance. The proposal includes an eastern side setback of at least 4m to the northeastern corner, and up to 5.4m to the southeastern corner. This is well above the minimum 2.5m requirement under Clause D3.7 of the Pittwater 21 DCP 2014. This setback is in accordance with a recommended condition of consent added to the assessment report of the previous development application on site (N0356/17). As such, a corridor view is retained for No. 1A Mountview Place. However, as per the planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, even in the case of a compliant development, a more skilful design may be considered. In accordance with this, a condition of consent has been applied to the recommendation, requiring the existing hedge vegetation along the northeastern portion of the eastern boundary to be trimmed and maintained to a maximum of 1m from the eastern boundary. The intention of this condition is to open up a portion of the corridor view to the east, in compensation for the loss of the western portion of the corridor view. The proposal, in conjunction with the condition of consent, provides adequate view sharing.

Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced. (S)

The proposal, in conjunction with the condition of consent requiring the trimming and maintenance of the eastern vegetation, provides adequate views and vistas from the road to the water and headland, through the partial retention and partial extension

Canopy trees take priority over views. (En, S)

The proposal provides an adequate balance between retention of trees and retention of the view corridor.

C1.4 Solar Access

The properties to the south (being Nos. 68 and 70 Cheryl Crescent) are most affected by the proposed development in relation to solar access. To assist in assessing the solar access impact of the proposed development, the Applicant has provided supplementary shadow diagrams to demonstrate the impact a development with a compliant 8.5m height of building would have.

At No. 68 Cheryl Crescent, the main private open space is to the north of the dwelling. The supplementary shadow diagrams depicting a compliant building height demonstrate that the main private open space at No. 68 Cheryl Crescent would receive approximately 5 hours of partial sunlight in the morning to early afternoon. The shadow diagrams depicting the proposed development demonstrate that the main private open space at No. 68 Cheryl Crescent would still receive (though reduced somewhat due to the increased, yet compliant, width of the proposed development) approximately 5 hours of partial sunlight. This is due to the section of shadow resulting from the portion of the development that is not compliant with the building height falling beyond the private open space, and likely onto the roof of No. 68 Cheryl Crescent. There is also no anticipated increase to overshadowing of the windows to habitable rooms at No. 68 Cheryl Crescent as a result of the non-compliant building height as when that portion of the shadow falls in this direction it falls over and beyond (to the south) the roof of No. 68 Cheryl Crescent, due to the topography of the land.

At No. 70 Cheryl Crescent, the main private open space is to the west of the dwelling. The supplementary shadow diagrams depicting a compliant building height demonstrate that the main private open space at No. 70 Cheryl Crescent would receive approximately 4 hours of partial sunlight in the morning to early afternoon. However, this partial overshadowing is not as a result of No. 10 Mountview Place, as the resultant shadows fall short of the main private open space at No. 70 Cheryl Crescent. The partial overshadowing is instead due to No. 2 Mountview Place, to the west of the subject site. The shadow diagrams depicting the proposed development demonstrate that the main private open space at No. 70 Cheryl Crescent remains unaffected by the proposed development. This is because the shadows resulting from the proposed development fall short of the main private open space at No. 70 Cheryl Crescent in the morning, and fall over the dwelling itself from 11am onwards. The partial overshadowing of the main private open space at No. 70 Cheryl Crescent remains to be as a result of No. 2 Mountview Place, to the west of the subject site. There is a minor increase to overshadowing of the windows to habitable rooms at No. 70 Cheryl Crescent as a result of the non-compliant building height at around 10am. Before 10am, the shadow of the non-compliant portion falls short of the windows at No. 70 Cheryl Crescent, and after 10am, the shadow of the non-compliant portion falls over the roof of the dwelling.

The subject site has a slope of approximately 36.79%, which is considered a steep and adverse slope. Where there is adverse slope or topography, reasonable solar access to the main private open space and to windows to the principal living area will be assessed on a merit basis. Subject to that merit assessment, consent may be granted where a proposal does not comply with the standard, provided the resulting development is consistent with the general principles of the development control, the desired future character of the locality and any relevant State Environmental Planning Policy. The proposal is consistent with the desired future character of the locality for the reasons detailed in the section of this report relating to A4.3 Bilgola Locality of the Pittwater 21 DCP 2014. The State Environmental Planning Policies relevant to this application are addressed throughout this report. The proposed development is acceptable in relation to the relevant outcomes of this clause of the Pittwater 21 DCP 2014, as follows:

Residential development is sited and designed to maximise solar access during mid-winter. (En)

The proposed dwelling is located as close to the north as possible in consideration of the relevant front building line control, thereby providing the greatest southern setback while retaining adequate and reasonable internal living space. Further, the proposed development is compliant with the relevant built

form controls within the P21 DCP, with the exception of the rear building line. However, the rear building line breach does not result in unreasonable overshadowing, as the non-compliance is minor and set below and to the south of the ridge height. While a portion of the development is not compliant with the height of building development standard under the Pittwater LEP 2014, this non-compliance does not result in additional overshadowing. Additional overshadowing is due to the proposed width of the ground floor. However, the ground floor is compliant with both building envelope and side building line controls. As above, the submitted shadow diagrams of both compliant and proposed developments demonstrate that the portion of the development that is not compliant with the building height does not result in the additional overshadowing impacts. Finally, the proposal includes clear glazing to the rear alfresco deck at the ground floor, so as to allow for solar access through. As such, the proposed development, being located on a north-south orientated site, is designed in order to provide reasonable solar access in consideration of the topography of the site and surrounding areas.

A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)

The proposal provides a reasonable level of solar access to the subject site and surrounding sites, considering the site's slope and context. The level of overshadowing resulting from the proposed development is a product of the steep topography of the site and the surrounding land. In this way, overshadowing impacts on properties to the south are inherently exacerbated compared to flat land. The properties to the south are particularly vulnerable to overshadowing. To require strict adherence to the solar access requirements in this case would unreasonably restrict development of the subject site. Despite the site's topography, the proposed development provides some areas of gained solar access for the property to the south west. Further, the proposed development is compliant with the relevant built form controls within the P21 DCP, with the exception of the rear building line due to the rear deck. However, this rear deck is open in structure to a distance of 6.8m from the rear boundary, thereby meeting the objectives and intention of the relevant control. The proposal also includes clear glazing to the rear alfresco deck at the ground floor, so as to allow for solar access through. The proposal is not compliant with the height of building development standard within the Pittwater LEP 2014, though this is acceptable in relation to overshadowing as above. It is noted that the property to the immediate south, at No. 68 Cheryl Crescent, contains solar panels in its north-east corner. The proposed development results in a minor increase to overshadowing to these solar panels in the afternoon. These solar panels receive a number of hours of solar access in the morning and are otherwise overshadowed by other properties or the land's topography.

Reduce usage and/dependence for artificial lighting. (En)

The subject site achieves adequate solar access in order to reduce its reliance upon artificial lighting. As above, the proposal provides a reasonable level of solar access to the subject site and surrounding sites, given the context of the area's topography and the vulnerability of the site's to the south.

C1.5 Visual Privacy

The proposed development is considered compliant with this control. However, a more detailed response is provided, given visual privacy to the properties to the south is noted as a concern in objections received. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)

The control requires that private open space areas living rooms of existing adjoining dwellings are to be protected from direct overlooking within 9m by building layout, landscaping, screening devices or greater spatial separation. Further, direct views from an upper level dwelling are to be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below. Finally, elevated decks are to incorporate privacy screens where necessary and should be located at the front

or rear of the building. The proposal includes a deck on the southern (rear) elevation of the dwelling, within 9m of the rear boundary, at the ground floor. As demonstrated in the submitted Drawing 1510.1327.15 Section Issue C dated 3 April 2018, the proposal now employs a non-trafficable portion of the verandah areas at the ground and first floor levels. These non-trafficable portion act as ledges that jut out to prevent overlooking down to the slope to the properties to the south. As such, the proposal is compliant with the controls, and privacy screening is not necessary in this case.

A sense of territory and safety is provided for residents. (S)

Given the above, the proposal does not result in an unreasonable visual privacy impact. As such, a sense of territory and safety is adequately provided surrounding residents.

C1.12 Waste and Recycling Facilities

While waste receptacles are not shown on plans, the site is of adequate dimensions to allow for appropriate storage of waste within the property boundaries.

D3.7 Side and rear building line

The proposed development includes a rear setback of 6.2m, where 6.5m is required. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

To achieve the desired future character of the Locality. (S)

The proposed development achieves the desired future character of the locality for the reasons detailed in the section of this report relating to Clause A4.3 Bilgola Locality of the Pittwater 21 DCP 2014.

The bulk and scale of the built form is minimised. (En, S)

The proposed development is of a bulk and scale that is consistent with existing developments in the locality. Further, the proposed development is compliant with the front and side building lines, and the building envelope control. The height of the proposed development is acceptable to the reasons detailed in the section of this report relating to Clause 4.6 of the Pittwater LEP 2014. Finally, while the proposal includes three storeys, the development presents to the streetscape as two storeys, as the basement level is set down the slope of the land. As such, the proposed bulk of the development is minimised to a reasonable level and is acceptable.

Equitable preservation of views and vistas to and/or from public/private places. (S)

The proposed development is adequately designed and sited so as to preserve views and vistas to and from the subject site and adjacent sites, as detailed in the section of this report relating to Clause C1.3 View Sharing of the Pittwater 21 DCP 2014.

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

The proposed development allows for adequate view sharing, as detailed in the section of this report relating to Clause C1.3 View Sharing of the Pittwater 21 DCP 2014.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

The proposed development is adequately designed and orientated to maintain a reasonable level of privacy, amenity and solar access for the subject site and adjacent sites, considering the context of the area. See also comments in the sections of this report relating to Clauses C1.4 Solar Access and C1.5 Visual Privacy of the Pittwater 21 DCP 2014.

Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)

The proposal provides a reasonable balance between mature vegetation within the front setback and

maintenance of views for the neighbour to the north. The proposal retains two large canopy trees and hedge planting in the front yard and removes three trees in order for the construction of the works and retention of views. This leads to adequate landscaping within the front building line to provide an attractive streetscape.

Flexibility in the siting of buildings and access. (En, S)

The proposed development is adequately sited to ensure a reasonable level of amenity for the subject site and adjacent sites, while also maintaining access to and around the subject site.

Vegetation is retained and enhanced to visually reduce the built form. (En)

The proposed development retains adequate vegetation within the front and rear yards in order to reduce the visual impact of the proposed dwelling and garage.

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

Not applicable. The subject site is not adjacent to a commercial zone.

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

The proposed development includes an undercroft area to a height of 4.5m, where the control provides for a maximum of 3.5m. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

To achieve the desired future character of the Locality.

The proposed development achieves the desired future character of the locality for the reasons detailed in the section of this report relating to Clause A4.3 Bilgola Locality of the Pittwater 21 DCP 2014.

To protect and minimise disturbance to natural landforms.

The proposed development includes a large undercroft area to provide greater living space (at the ground floor level) without requiring significant earthworks. In this way, the proposal provides lesser disturbance to the natural landform of the site.

To encourage building design to respond sensitively to natural topography.

As above, the building is designed in order to best respond to the topography of the site while reducing the requirement for significant earthworks. The visual impact of the proposed works are softened with the retention of vegetation and planting in the rear yard, and the inclusion of additional screen planting to the undercroft area.

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 DA2018/0570 for Construction of a new dwelling house including the retention of a substantial portion of the existing dwelling house on land at Lot 42 DP 236798, 10 Mountview 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		
Drawing No.	Dated	Prepared By
1510.1327.01 Site Plan	3 April 2018 Issue C	Penguin Designs
1510.1327.03 Plans	3 April 2018 Issue C	Penguin Designs

1510.1327.04 Plans	3 April 2018 Issue C	Penguin Designs
1510.1327.05 Plans	3 April 2018 Issue C	Penguin Designs
1510.1327.06 Elevations	3 April 2018 Issue C	Penguin Designs
1510.1327.07 Elevations	3 April 2018 Issue C	Penguin Designs
1510.1327.08 Elevations	3 April 2018 Issue C	Penguin Designs
1510.1327.09 Elevations	3 April 2018 Issue C	Penguin Designs
1510.1327.14 Section	3 April 2018 Issue C	Penguin Designs
1510.1327.15 Section	3 April 2018 Issue C	Penguin Designs

Engineering Plans		
Drawing No.	Dated	Prepared By
1510.1327.17 Site Plan (Stormwater Plan)	3 April 2018 Issue C	Penguin Designs

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A312276	3 April 2018	H.W. Barnwell Pty Ltd
Impact Assessment Report	July 2017	Paul Shearer Consulting
Risk Analysis & Management	27 July 2017	Jack Hodgson Consultants Pty Limited

- 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.
- d) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
1510.1327.17 Site Plan (Landscape Plan)	3 April 2018 Issue C	Penguin Designs

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**

Drawing No. 1510.1327.17 Site Plan (Landscape Plan) Issue C dated 03 April 2018 is to be amended to demonstrate that the existing hedge/screen planting on the northern portion of the eastern boundary is to be trimmed and maintained to a maximum of 1m depth from the eastern boundary. No additional canopy trees, vegetation or structures that shall obstruct the view corridor obtained through the eastern side setback are permitted. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises 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 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. **Geotechnical Report Recommendations have been correctly incorporated into designs and structural plans**

The recommendation of the risk assessment required to manage the hazards as identified in Geotechnical Report prepared by Jack Hodgson Consultants (MO 28906) dated 27 July, 2017 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.

9. **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)

10. **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)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **Tree protection**

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

- i) all trees and vegetation within the site, nominated on the plans and as recommended in the Impact Assessment report, prepared by Paul Shearer Consulting, dated July 2017, and the Addendum dated 09.04.2018, 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 of trees and/or bushland (Control B4.22)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **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.

13. **Arborist Recommendations to be Implemented**

All recommendations as outlined in the supplied arborist report (July 2017) and arborist statement (9 May 2018) by Paul Shearer Consulting are required to be complied with before and throughout the development period, particularly with regard to the following:

- a) Works, erection/demolition of structures, excavation or changes to soil levels within 5 metres of existing trees are not permitted unless part of the development as approved, and the storage of spoil, building materials, soil or the driving and parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained is not permitted;
- b) Where specified, tree guards are to be provided to all trees as indicated in the report, and are to be installed prior to the commencement of any work on the site. Tree guard materials and dimensions are specified in the arborist report;
- c) All works within 5 metres of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and suitably qualified arborist. In the event that major structural or feeder roots are encountered, the arborist is to advise the builder to carry out appropriate action to ensure the retention of the tree.
- d) Signage is to be erected advising all contractors and visitors to the site that no works or storage is to take place within the calculated Tree Protection Zone (TPZ) of existing trees.
- e) Relocation of impacted *Livistona australis* specimens to a suitable location on site.

Any changes or alterations made to the tree management recommendations as outlined by the arborist report due to the discovery of new structural roots or underground services during development works must be reported to the Principal Certifying Authority prior to works recommencing.

Reason: To ensure the retention of the Urban Forest/Natural Environment and remain consistent with approved reports.

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

14. **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

15. **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.

16. **Landscape Completion**

Landscaping is to be implemented in accordance with the Landscape Plan 1510.1327.27, submitted by Penguin Designs, dated.03.04.18.

Prior to the issue of an 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 (Control C1.1)

17. **Practical Completion of Landscape Works**

A landscape practical completion report is to be prepared by the consultant landscape architect/designer and submitted to the Principal Certifying Authority with the Occupation Certificate application. This report is to certify that all landscape works (specifically, appropriate relocation of the *Livistona australis* have been completed in accordance with the landscape working drawings and specifications.

Reason: To ensure landscaping is adequate and consistent with approved plans.

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

18. **Landscape maintenance**

Any existing landscaping required to be retained by this consent together with all new landscaping is to be maintained for the life of the development.

Landscape works shall be maintained to achieve establishment 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 in accordance with the Landscape Plan submitted by Penguin Designs, dated 03.04.18.

Reason: This is to ensure that landscaping is maintained appropriately. (Control C1.1)

19. **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.

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

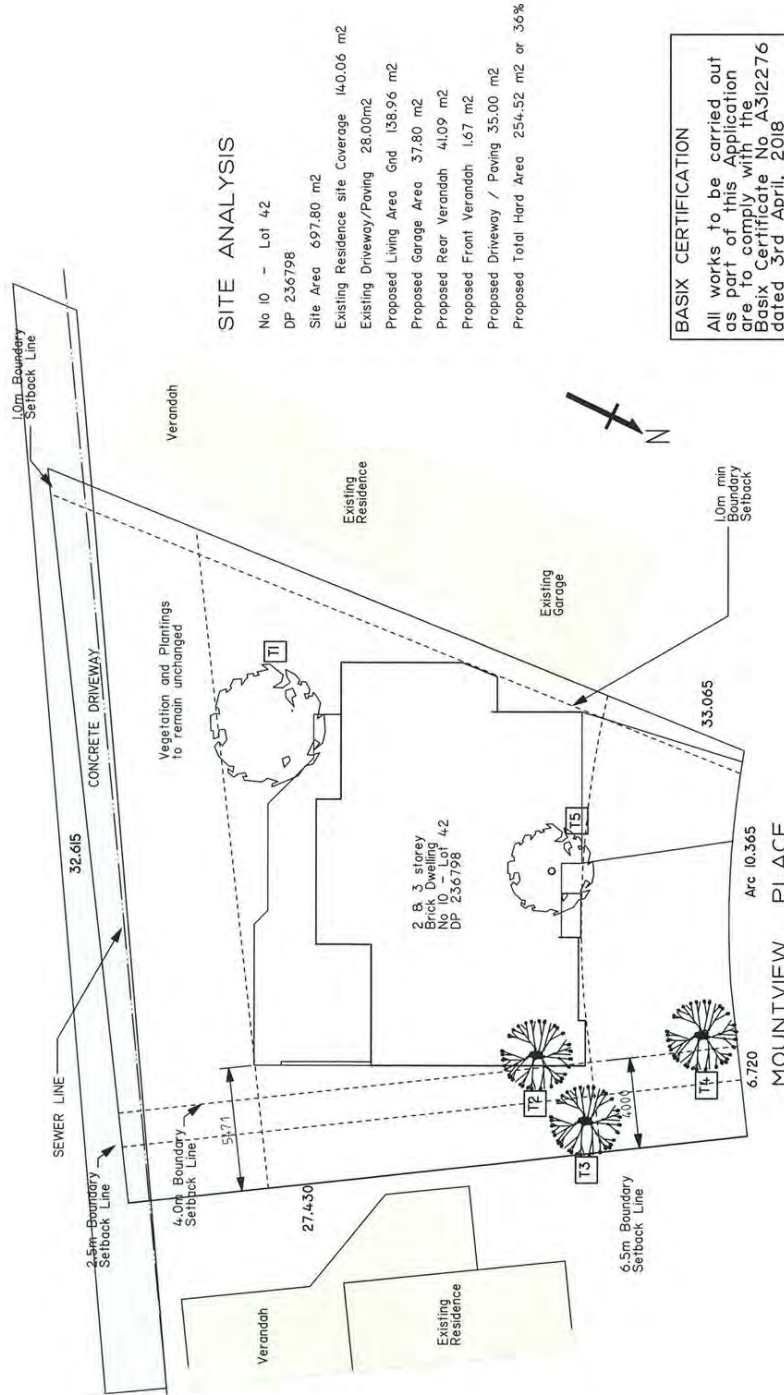
If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage.

21. **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.



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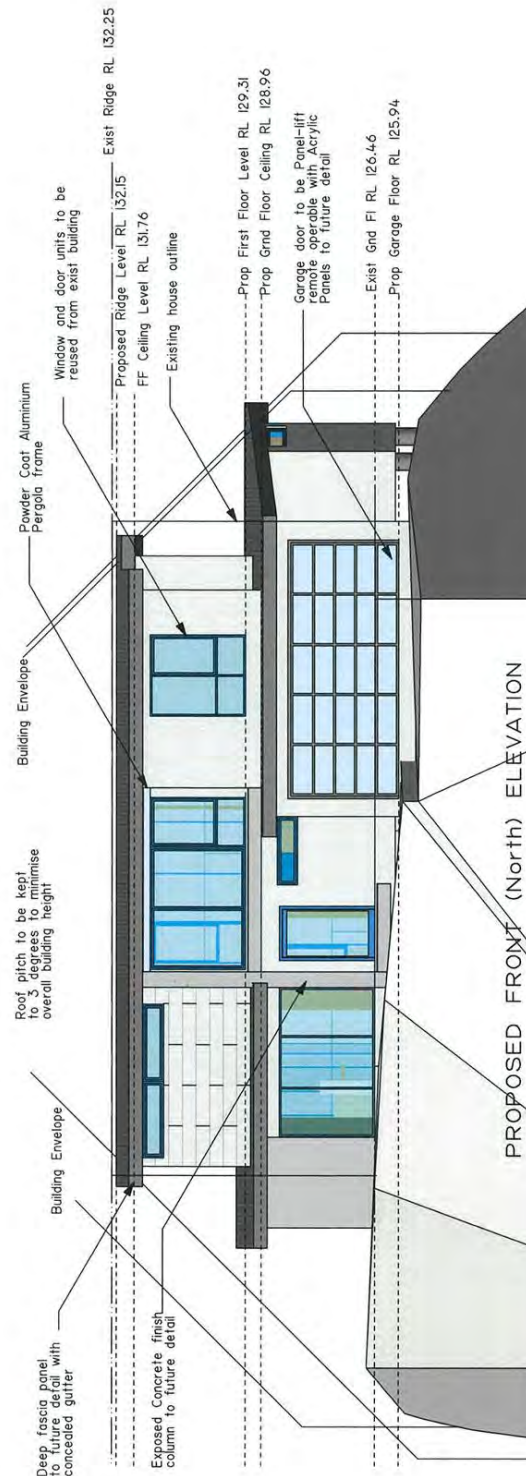
MS. P. BOULTON,
10 MOUNTVIEW PLACE,
BILGOLA PLATEAU NSW 2107

DATE: 03.04.18
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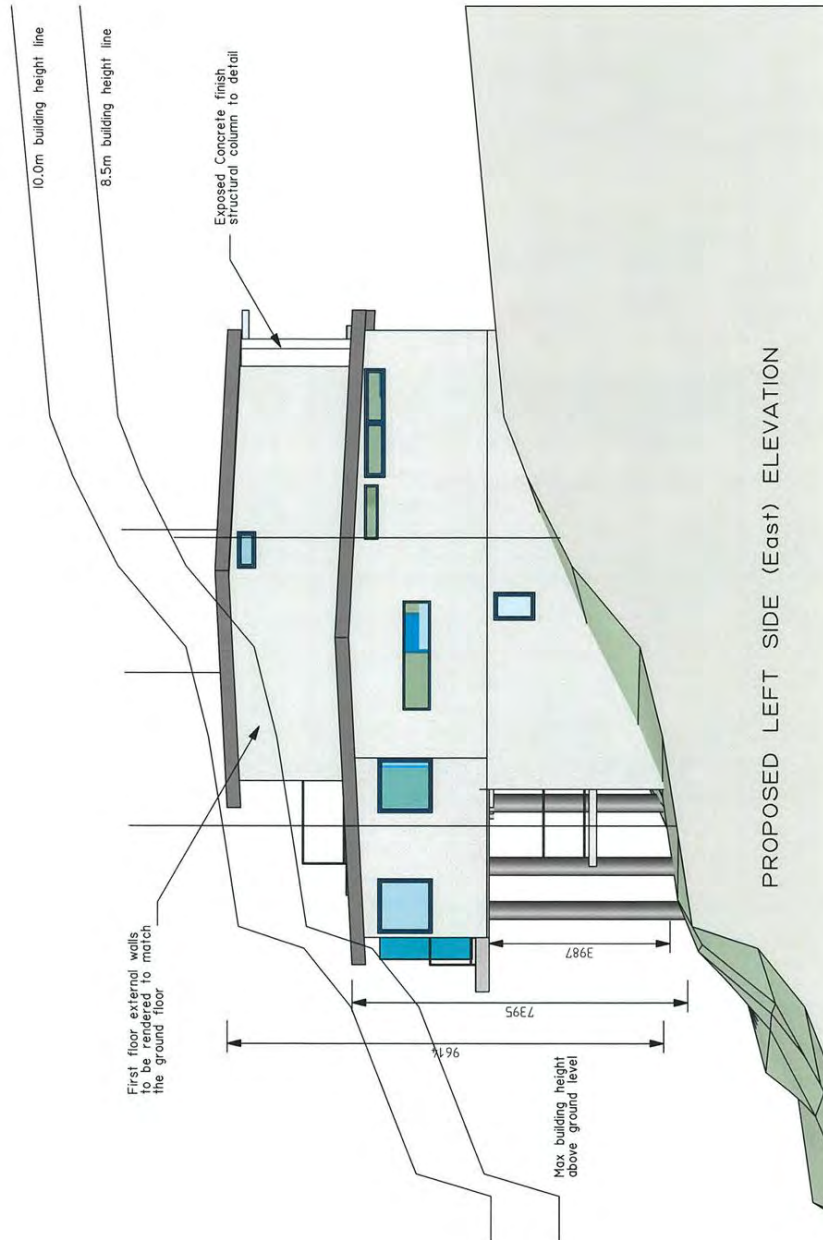
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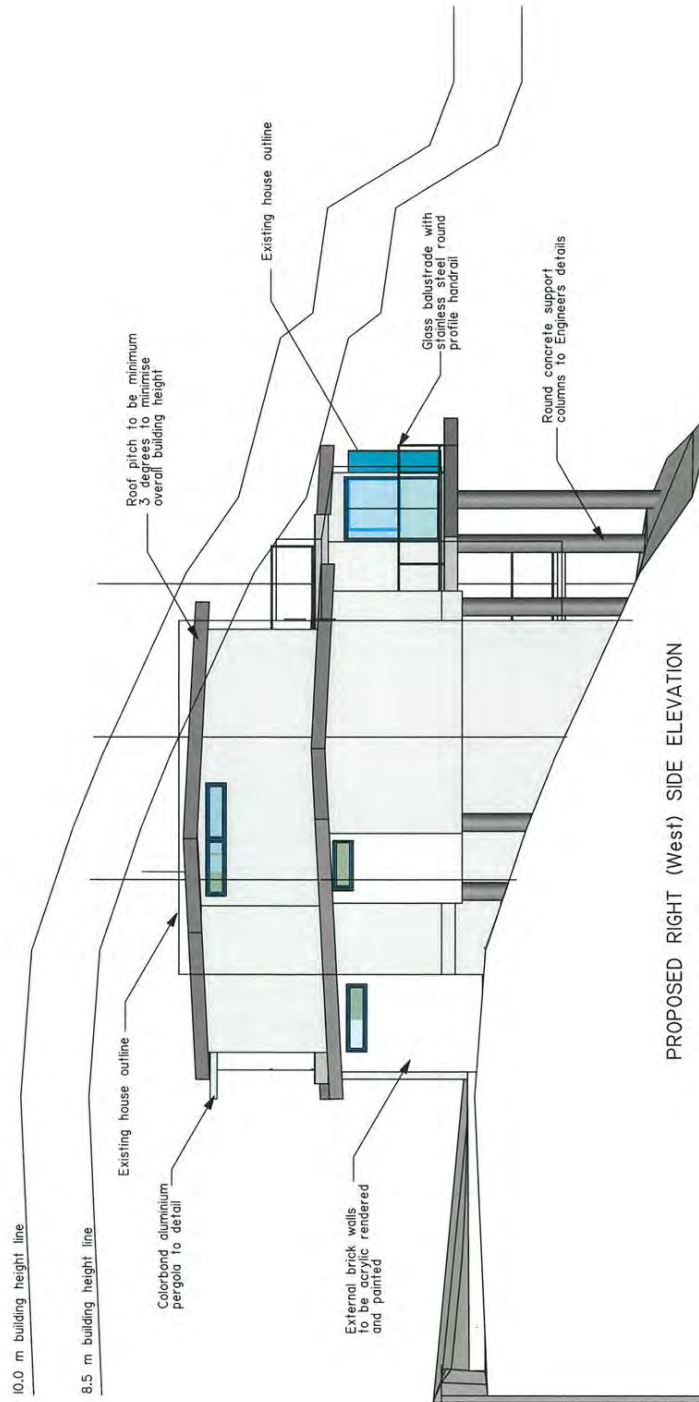
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1510.1327.01

SITE PLAN









Vaughan Milligan Development Consulting Pty Ltd

**APPENDIX
CLAUSE 4.6 – BUILDING HEIGHT**

Vaughan Milligan Development Consulting Pty Ltd

OBJECTION PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

10 MOUNTVIEW PLACE, BILGOLA PLATEAU

FOR PROPOSED NEW DWELLING

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE WORKS WITHIN COUNCIL'S
MAXIMUM BUILDING HEIGHT AS DETAILED IN CLAUSE 4.3 OF THE PITTWATER
LOCAL ENVIRONMENTAL PLAN 2014**

For: For proposed construction of a new dwelling which includes the retention of a significant portion of the existing dwelling
At: 10 Mountview Place, Bilgola Plateau
Owner: Ms P. Boulton
Applicant: Ms P. Boulton
C/- Vaughan Milligan Development Consulting

1.0 Introduction

This objection is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

2.0 Background

Clause 4.3 restricts the height of a building within this area of the Bilgola locality and refers to the maximum height noted within the "*Height of Buildings Map*."

The relevant building height for this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

Due to the sloping topography of the site and the siting of the existing development, the proposed new works will be up to approximately 9.6m in height.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

10 Mountview Place, Bilgola Plateau

28

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There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for construction of a new dwelling involving additions to the existing ground floor and basement levels which are to be retained, which is consistent with the stated Objectives of the E4 Environmental Living Zone, which are noted as:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- To ensure that residential development does not have an adverse effect on those values.*
- To provide for residential development of a low density and scale integrated with the landform and landscape.*
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

As sought by the zone objectives, the proposal will provide for a new dwelling which is sensitive to the location and the topography of the locality.

The proposal includes modulated wall lines and a consistent palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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.*

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This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the judgement states:

Clause 4.6 of LEP 2014 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(iii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The proposed development of and use of the land within the E4 Environmental Living Zone is consistent with the zone objectives, which are noted over as:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comments

It is considered that the proposed development will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing residential development within the locality.
- The proposed development respects the scale and form of other new development in the vicinity and therefore complements the locality.
- The setbacks maintain compatibility with the existing surrounding development.
- The proposal does not have any unreasonable impact on long distance views.

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Accordingly, it is considered that the site may be developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.3 are articulated at Clause 4.3(1):

- (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,*
 - (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
 - (c) *to minimise any overshadowing of neighbouring properties,*
 - (d) *to allow for the reasonable sharing of views,*
 - (e) *to encourage buildings that are designed to respond sensitively to the natural topography,*
 - (f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Comments

Despite the minor variation to the statutory height control which occurs as a result of the sloping topography of the site and the siting of the existing development, the proposed new development is considered to be in keeping with the desired future character of the locality.

The proposed development is not considered to result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

The proposal is generally consistent with the height and scale of development in the locality, and the modulation of the façades minimises the visual impact of the development.

The proposed new dwelling is subject to a maximum overall height of 8.5m, and the majority of the new works will comfortably comply with the maximum overall height control.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for a new dwelling which essentially comprises new works at the existing upper floor level and additions and alterations to the existing basement and ground floor levels, which will be constrained by the sloping topography of the site and the siting of the existing development. The new works will not exceed the existing overall height of the building and will have a resultant height which is up to 100mm lower than the existing dwelling.

Council's controls in Clause 4.3 provide a maximum overall height of 8.5m.

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It is considered that the proposal achieves the Objectives of Clause 4.3 and that the development is justified in this instance for the following reasons:

- The proposed works will maintain consistency with the general height and scale of residential development in the area and the character of the locality.
- The proposed height and the overall scale of the new works will maintain amenity and appropriate solar access for the subject site and neighbouring properties.

For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Council's controls in Clause 4.3 provide a maximum overall height of 8.5m for the subject development.

Due to the sloping topography of the site and the siting of the existing development, the proposed new works will be up to approximately 9.6m in height.

The development is justified in this instance for the following reasons:

- The proposed maximum height of the new works is sited below the existing overall maximum ridge height of the dwelling's primary roof form. The existing roof form has a ridge height of RL 132.25m, with the proposed new roof form having a ridge height of up to RL 132.15m, which is 100mm below the existing ridge height.
- Compliance with the height control is constrained by the sloping topography of the site and the siting of the existing development.
- The development does not result in a significant bulk when viewed from either the street or the neighbouring properties.
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The proposal is stepped to follow the site's sloping topography.
- The extent of the proposed new works where they are not compliant with Council's maximum height control do not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale.

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Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum building height.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

Accordingly, in regards to the proposed development at 10 Mountview Place, Bilgola Plateau, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The development is constrained by the siting of the existing development and sloping topography of the site.
- The proposed new works are stepped to follow the sloping topography of the site.
- The variation to the height control is inconsequential as it not considered to have any unreasonable impact to the streetscape and the amenity of neighbouring properties.

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The above are the environmental planning grounds which are the circumstance which are particular to the development which merit a variation to the development standard.

In the *Wehbe* judgment (*Wehbe v Warringah Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Comment: Not applicable.

5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Comment: The development standard is applicable to and appropriate to the zone.

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7.0 Conclusion

This development proposed a departure from the maximum building height development standard, with the proposed new dwelling to provide a maximum overall height of 9.6m.

This variation occurs as a result of the siting of the existing building and sloping topography of the site.

This objection to the maximum building height specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

In my opinion, strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner

ITEM 3.6	DA2018/1018 - 52 PERONNE AVENUE, CLONTARF - DEMOLITION WORK AND CONSTRUCTION OF A DWELLING HOUSE
REPORTING MANAGER	RODNEY PIGGOTT
TRIM FILE REF	2018/598727
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 DA2018/1018 for demolition work and construction of a dwelling house on land at Lot 11 DP 29355, 52 Peronne Avenue, Clontarf, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1018
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot 11 DP 29355, 52 Peronne Avenue CLONTARF NSW 2093
Proposed Development:	Demolition work and construction of a 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:	Neil Clinton Tanner Grace Lu Ye
Applicant:	Peter Downes
Application lodged:	15/06/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	18/06/2018 to 04/07/2018
Advertised:	Not Advertised
Submissions Received:	5
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,090,000.00

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) 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;

DA2018/1018

Page 1 of 42



- 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 - 3.4.1 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
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 11 DP 29355 , 52 Peronne Avenue CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Peronne Avenue Clontarf.</p> <p>The site is irregular in shape with a frontage of 17m along Peronne Avenue and an average depth of 43.2m. The site has a surveyed area of 677.8m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a 2 and 3 storey dwelling house with attached elevated swimming pool to the rear. The road reserve to the front of the property slopes steeply towards Peronne Avenue. As a result access is gained through a shared driveway to the front of 54 Peronne Avenue.</p> <p>The site slopes from east to west and has a crossfall of 20.5m.</p> <p>The site is landscaped and includes some large trees to the rear of the existing dwelling.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by two and three storey dwelling houses.</p>

Map:

DA2018/1018

Page 2 of 42



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:

A Pre-lodgement meeting was held on the 28 November 2017. The applicants were advised that the proposal was acceptable subject to no unreasonable loss of views and the provision of 2m physical separation of the paved area to the rear and the northern boundary. The proposal is consistent with this advice.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes the demolition of the existing dwelling house and construction of a four level dwelling house including the following:

Level 1

- Garage
- Courtyard
- Foyer, WC and lift

Level 2

- Bedroom 2 and 3 with attached terrace, bedroom 4, shower and lift

Level 3

DA2018/1018

Page 3 of 42



- Bedroom 1 with ensuite, WC, walk in robes and attached terrace, laundry and lift

Level 4

- Open plan dining and kitchen, living room, lift and attached deck.
- Infill of existing pool and use as a terrace incorporating 2m planter box on northern boundary.

Site

- Landscaping

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	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 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</p>



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

Name:	Address:
Mr David James Harrison	61 Gordon Street CLONTARF NSW 2093
Mr Gregory Martyn Fordred	59 Gordon Street CLONTARF NSW 2093
Mr Marcus Dalby Andrew Hebblethwaite	22 / 56 Whistler Street MANLY NSW 2095
Mr Ajoy Ghosh	41 Peronne Avenue CLONTARF NSW 2093
Mr Kym George Dracopoulos	45 Peronne Avenue CLONTARF NSW 2093

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

- Bulk and scale, development is too high and dominating
- The style is out of character
- Much more visible from the rear
- Tree removal
- Incorrect landscape calculations and reduced landscaped areas
- View loss assessment and loss of views due to proposed four mature trees in the backyard
- Incorrect notification
- Traffic management
- Foreshore Scenic Protection Area and Acid Sulfate soils not addressed

The matters raised within the submissions are addressed as follows:

- Bulk and scale, development is too high and dominating
Comment:
The height number of storeys and bulk and scale has been assessed below with regard to the objectives of Clause 4.3 Height of Buildings. The assessment found that the proposal is of a bulk and scale that is consistent with the streetscape and is designed to ensure no unreasonable impacts within the locality. See assessment below for details.
- The style is out of character
Comment:
There is no defined or enforceable architectural style for this area.
- Much more visible from the rear
Comment:
The proposal will be visible as a one-two storey building at the rear. Furthermore the proposal is compliant with the rear setback control of the Manly DCP 2013. The visibility of the proposal from the rear properties is not unreasonable within a residential area.



- Incorrect landscape calculations and reduced landscaped areas
Comment:
Independent landscape calculations were undertaken. These calculations found the development to be compliant with the minimum landscape area. This combined with the proposed landscaping is suitable to maintain the landscape character of the locality.
- View Loss assessment and loss of views due to proposed four mature trees in backyard.
Comment:
An independent view loss assessment was conducted. From this assessment it was evident that the dwelling house would not result in any unreasonable loss of views. However, the four large trees if allowed to mature would result in the loss of views. As such it is recommended that four trees be deleted from the landscape plans. For further details on the view loss assessment, see below.
- Incorrect notification
Comment:
The proposal was notified in accordance with the Manly DCP 2013. Regardless, a site inspection was conducted to the property in question and the impacts were found to be negligible.
- Traffic management
Comment:
A condition requiring a construction traffic management plan has been recommended. This is appropriate to maintain the traffic conditions within the locality.
- Foreshore Scenic Protection Area and Acid Sulfate soils not addressed
Comment:
The proposal will not result in any unreasonable impacts on the foreshore scenic protection area and is consistent with the provisions of Clause 6.9 of the Manly LEP 2013. The site is identified as class 5 Acid Sulfate Soils. This is required to be addressed for land below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land. This is not relevant to this application.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape proposal is acceptable subject to protection of existing trees proposed for retention and completing of landscaping.</p> <p>Council's Landscape section have assessed the application against Manly DCP 2013.</p> <p><u>Planning Comments:</u> As discussed below, the four proposed Angophora Costata are</p>

DA2018/1018

Page 7 of 42



Internal Referral Body	Comments
	recommended to be deleted from the plans to retain views within the locality.
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following condition of consent.

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A313471 dated 15 April 2018).

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

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

Manly Local Environmental Plan 2013

DA2018/1018	Page 8 of 42
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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	5.4m - 10.7m	25.8%	No
Floor Space Ratio	FSR: 0.4:1 (271.1sqm)	FSR: 0.376:1 (254.9sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	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

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:	5.4m - 10.7m
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	25.8%

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 non-compliance is a result of the roof over the western facing level 4 balcony attached to the living room. The remainder of level 4 is compliant with the height of buildings control. The non-compliance is a direct result of the steep slope to the west/north-west. The balcony roof is set 300mm below the maximum ridge level of the proposed dwelling and will maintain the appearance of stepping with the topography. The design to step back with the topography will ensure the development appropriately responds to the topography and will disguise the overall height of the development. The site is set above the level of the street. As the dwelling is elevated above the street the design to step back with the topography will result in level four not being visible from the front of the property. The proposed design provides relief to the street frontage and will ensure the proposal respects the topographic landscape within the locality.

The proposed Maximum RL of the dwelling is 54.81. The survey shows the neighbouring property to the north with an RL of 53.62 and the property to the south has a maximum RL of 54.93. Given that the site slopes to the west/north-west, the proposal is consistent with the prevailing building height.

The high side of Peronne Avenue in this area is dominated by three storey dwelling houses, many of which do not provide any stepping or relief from the street frontage. The proposal is for the majority two storeys and steps back with the topography to achieve four levels. By stepping back the proposal will disguise the height of level 4 and reduce the overall bulk and scale of the development. The proposed development is consistent with development within the street and the design will ensure the proposal maintains the desired future streetscape character within the locality.

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

Comment:

As discussed above, the proposal is designed to step with the topography. This combined with the height of the site above the street will ensure the top storey is not visually prominent from the streetscape. The non-compliance is also as a result of the roof over the unenclosed balcony attached to the living room. As this balcony is unenclosed and not visually prominent it will not significantly add to the bulk of the development. The proposal is appropriately designed to minimise the bulk and scale of the development.

c) to minimise disruption to the following:

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

DA2018/1018

Page 10 of 42



- (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 with regard to the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the Views Planning Principle established by the NSW Land and Environment Court. In summary the proposal was found to achieve adequate view sharing subject to the amendment to the proposed trees in the rear yard.

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 has been assessed with regard to the objectives of clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. In summary the assessment found that the proposal would not result in any unreasonable overshadowing. Further to this assessment, the non-compliance is on the northern boundary and will not result in any unreasonable overshadowing.

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 non-compliant roof over the balcony of level 4 will not result in any unreasonable impacts on the amenity of the locality and will not be visually prominent from the streetscape. The nearby and surrounding development is characterised by three storey dwelling houses. The proposal is consistent with the existing character of development within the streetscape. The degree of flexibility is appropriate in this circumstance due to the minimal impacts on the neighbouring properties and the streetscape.

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

Comment:

The non-compliant area of roof will screen the living areas from the western sun and provide amenity to the private open space of the dwelling. The roof does not result in any unreasonable impacts on the amenity or streetscape of the locality. For these reasons the proposal is considered to achieve a better outcome from this development.

(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 proposal was accompanied by a written request to vary the development standard that provides the following justification:

"3.0 THE OBJECTIVES OF THE DEVELOPMENT STANDARD

The proposal does not offend the objectives of Clause 4.3 as the building height and form will be consistent with the landscape and offer a compatible built form along Peronne Avenue without adversely impacting upon adjacent sites in terms of solar access, view loss or any other sense of enclosure.



The proposal minimizes disruption of views to nearby residential development from public spaces (including the harbour and foreshores) as there is currently no view of this type, minimizes disruption to views from nearby residential development to public spaces (including the harbour and foreshores) due to the significant difference in elevation of adjacent sites fronting Gordon Street and does not impact upon views between public spaces (including the harbour and foreshores).



View of subject site showing context of adjacent dwellings

The photograph above shows the existing dwelling on the subject site. The existing building in the centre of the photograph (sloping tiled roof) is currently well below the adjacent dwellings at No.s 50 and 54.

Also noteworthy is the elevation of the dwellings at the rear of the subject site, well above the current and proposed roof height. The proposal will result in a structure that will be (despite breaching the height development standard) not only compatible, but entirely consistent with the building heights on both adjacent sites.

Views of the harbour from sites at the rear are unlikely to be eroded as the dwellings behind are elevated by a significant degree and look across the subject site.

4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

The breach of the development standard is minimal and is not an unreasonable attempt to gain additional floor space, views or open space for the proposal. The breach does not unreasonably impact upon the locality and I am of the opinion that compliance with the relevant development standard is unreasonable and unnecessary in these circumstances.

5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?



*The proposal seeks to endorse the MLEP Objectives by providing consistent character of the locality and minimizes view loss to nearby sites.
These objectives are endorsed without any unreasonable environmental or amenity impacts and as such the contravention of the development standard is justified."*

(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 the 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 development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. Following the release of PS18-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for 12 months from 1 March 2018, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary the height of buildings development standard by more than 10%.

As the development varies the development standard by more than 10% the concurrence of the Secretary is assumed subject to determination through Councils Development Determination Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 677.8sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 8m (based on gradient 1:4+)	5.3m - 10.3m	28.7%	No

DA2018/1018

Page 14 of 42



	South: 8m (based on gradient 1:4+)	2.43m - 8.46m	5.75%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.64m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing setback to dwellings 6.9m (54 Peronne Ave - Garage/Pool Nil - Dwelling 8.8m 52 Peronne Ave - Dwelling 5m)	Courtyard 3.1m Dwelling 5.2m-7.2m	55%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	North Level 1m - 1.1m-nil Level 2 1.8m - nil Level 3 - 2.7m - 0.84m Level 4 - 3.4m - 1.8m	North Level 1 - 2.32m Level 2 - 3.32m - 2.32m Level 3 3.32m - 2.32m Level 4 - 3.32m - 2.32m	2.3%	No
	South Level - 1 - 0.6 Level 2 - 1.2m - nil Level 3 - 2.1m - 1.2m Level 4 - 2.8m - 0.8m	South Level 1 - 1.6m - 1.1m Level 2 - 4.4m - 1.2m Level 3 - 1.36m - 1m Level 4 - 2.5m - 1m	35%	
4.1.4.4 Rear Setbacks	8m	17m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (406.68sqm)	57.7% (391.1sqm)	3.8%	No
	Open space above ground 25% of total open space (92.6sqm)	16.8% (62.5sqm)	N/A	
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (148.16sqm)	70% (274.4sqm)	N/A	Yes
	3 native trees	5 trees	N/A	No, see discussion under clause 4.1.5.
4.1.5.3 Private Open Space	18sqm per dwelling	55sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	9m	45%	No
4.4.5 Earthworks Excavation and Filling	generally 1m	6m - entry foyer 6.6m - lift	100%	No



Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes
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***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
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 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
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Merit consideration:

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:

DA2018/1018

Page 16 of 42



The proposed garage is incorporated into the design of the dwelling and is suitably setback from the street to ensure no unreasonable impacts. The proposal does not include any front boundary walls or fences.

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

Comment:

The streetscape within the locality is dominated by three storey dwelling houses, some providing no articulation or further setbacks in the higher storeys such as 54 Peronne Avenue. The proposal is consistent with the built form within the locality. Furthermore, there is no predominant architectural style within the locality. The architectural style of this building is not unreasonable or imposing on the streetscape. The proposed development will compliment the streetscape of the locality. The site gains access through a shared driveway to the front of 54 Peronne Avenue. This driveway steeply slopes up to 52 Peronne Avenue. The site is 3m-4m higher than Peronne Avenue and is separated from the road by an 8m road reserve. The front setbacks provided by the development and the separation from the road reserve ensures the development will not impose on the streetscape.

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

Comment:

The proposal does not include any front fences or walls.

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.

3.4.1 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 subject site and neighbouring lots run in an east-west orientation. The proposed development is proposed to be sited consistent with the building lines of the neighbouring properties. As a result the eastern and western private open spaces and windows to living areas will retain access to light in the morning and afternoons of the winter solstice. The proposed development will retain 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:

The neighbouring properties will retain adequate solar access to private open spaces and windows to living spaces/habitable rooms during the mornings and afternoon of the winter solstice.

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 is suitably modulated and designed to maximise the penetration of sunlight into the windows, living rooms and principal outdoor areas of the site and adjoining properties.

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 southern side of the development contains one window facing the side boundary. This window is not elevated and will not result in any unreasonable overlooking.

The northern elevation contains a number of windows facing the side boundary. The windows to level 2 are to bedrooms, are setback 3.32m from the side boundary and are not significantly elevated. For these reasons the windows will not result in any unreasonable privacy impacts. The windows W12 and W13 are to the living room of the proposed dwelling and are adjacent to the entry path and inclinator of the neighbouring property. These windows will not result in any direct viewing between windows or unreasonable overlooking of private open space. The window W5 is to the master bedroom and is setback 3.3m. This is not to a living area however the window is directly adjacent to the principal private

DA2018/1018

Page 18 of 42



open space of the neighbouring property. This window will result in unreasonable overlooking of this private open space. As such a condition is recommended to require translucent glazing to a height of 1.65m above finished floor level. This will minimise the loss of privacy to the neighboring property while retaining solar access to the subject site. The proposed balcony on level 4 is adjacent to the top floor balcony of the neighbouring property. It is recommended a condition requiring a privacy screen of 1.65m adjacent to or within the arch on the western elevation. This will mitigate any direct viewing between the outdoor open spaces.

The proposed infill of the swimming pool incorporating a 2m wide planter box provides adequate separation to maintain the privacy of the neighbouring property.

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 subject to the conditions of consent will not result in any unreasonable privacy impacts within the locality and will not compromise access to light and air. The proposal will achieve a balanced outlook and views from habitable rooms and private open space.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will encourage passive surveillance of the streetscape.

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

Description of non-compliance

Concern was raised over loss of views from the 57, 59 and 61 Gordon Street to the rear of the subject site.

Merit consideration:

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

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

Comment:

The proposal has been assessed below with regard to the views planning principle, established by the NSW Land and Environment Court and was found to maintain view sharing within the locality.

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 affected will be water views gained from overlooking the rear boundaries of the properties.

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 outdoor decks and living rooms of the properties from both a sitting and standing position.



View from deck of 57 Gordon Street



View from deck attached to living room of 61 Gordon Street



View from living room window of 59 Gordon 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 proposed dwelling will have a maximum roof height that is 2.77m higher than the existing development on the site. This will be 1.2m higher than the parapet of the white building on the right of the pictures. The proposed dwelling will not result in any unreasonable disruption of views from the decks or living rooms of the affected properties. The impact of the proposed dwelling is best characterised as negligible. The proposal includes the planting of 4 *Angophora Costata* in the backyard. The Manly DCP 2013 indicates these have a maximum height of 25m. If allowed to mature these trees would result in the significant loss of views. It is recommended that the proposed trees be deleted from the plans. The proposal subject to the conditions of consent will not result in any unreasonable disruption of views.

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

DA2018/1018

Page 22 of 42



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 proposed dwelling does not result in any unreasonable loss of views. The condition of consent requiring the deletion of the four large trees in the rear yard will ensure the landscaping does not result in the disruption of views. The proposal subject to the conditions of consent will maintain acceptable view sharing within the locality.

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 subject to the conditions of consent will minimise loss of views including accumulated view loss.

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 8m on this site. The proposal includes a wall height of 5.3m-10.3m on the northern side and 2.43m - 8.46m on the southern side.

Merit consideration:

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

(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 compliant with the height of buildings control with the exception of the roof over the western facing level 4 balcony attached to the living room. This element is stepped back from the front of the property to ensure it is not visually prominent from the streetscape. As discussed above under Clause 4.6, the proposal is of a height that is consistent with the prevailing building heights and of a design that is consistent with the topographic landscape and desired future streetscape character. Furthermore the design to step back with the topography will ensure the wall height of the development is minimised and is consistent with the nearby properties.

DA2018/1018

Page 23 of 42



b) to control the bulk and scale of buildings,

Comment:

As discussed above, the proposal is appropriately designed to minimise the bulk and scale of the development.

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 with regard to the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the Views Planning Principle established by the NSW Land and Environment Court. In summary the proposal was found to achieve adequate view sharing subject to the amendment to the proposed trees in the rear yard.

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 has been assessed with regard to the objectives of clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. In summary the assessment found that the proposal would not result in any unreasonable overshadowing.

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 requires development to be setback a distance equal to 1/3 of the wall height. The proposal is not compliant with this control due to a small portion of the balcony on level 4 on the northern elevation and level 3 and level 4 on the southern elevation. The Manly DCP 2013 requires



buildings to be setback from the front boundary in line with the prevailing building line. The proposal does not comply with this due to the front entrance courtyard and a small section of the garage on the northern edge.

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 property gains access through a shared driveway to the front of 54 Peronne Avenue. The shared access rises steeply to the subject site. The site is 3m-4m higher than Peronne Avenue and is separated from the road by an 8m road reserve. The entry courtyard is not roofed and is designed to minimise its bulk. This element will not be visually prominent from the streetscape. Furthermore the neighbouring property at 54 Peronne Avenue is developed with a two car garage and entry way on the front boundary.

The non-compliance of the dwelling house with the front setback is minor and is generally consistent with the front setbacks within the streetscape. The proposed development will maintain the existing streetscape including the desired spatial proportions of the street, street edge and the 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:

The proposal is considered to ensure and enhance the local amenity for the following reasons:

- The assessment under Clause 3.4.2 Privacy and Security Manly DCP 2013 found that the proposal could achieve a reasonable level of privacy subject to conditions of consent.
- The assessment under Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013 found that the proposal would maintain an equitable access to light sunshine and air movement within the locality.
- The assessment under Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 found the proposal would achieve a reasonable sharing of views, subject to conditions requiring amendments to the landscaping.
- The proposal will maintain adequate space between buildings to create a rhythm of spaces. The proposal will maintain the character of the streetscape.
- The proposal will maintain the current vehicular access. The proposal will not impact the traffic



conditions within the locality.

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

Comment:

The proposed flexibility will not result in any unreasonable impacts on the amenity or the streetscape within the locality. Furthermore the proposal is consistent with the objectives of the control. The proposed flexibility is 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 provides suitable landscaped areas tree plantings and tree protection to enhance and maintain the natural features on 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 and 3 native trees of the species specified by the Manly DCP 2013 to be provided on the site. The proposal will result in 57.7% of the site as total open space a variation to the control of 3.8%. The proposal includes 5 trees as per the Manly DCP 2013. However, as discussed below the mature height of these trees would result in the significant obstruction of views. As such the proposed 4 trees are recommended to be deleted from the landscape plan.

Merit consideration:

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

DA2018/1018

Page 26 of 42



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

Comment:

The proposed tree removal has been appropriately justified by an arborist report. The proposal will maintain one significant 15m Angophora costata and will augment the native vegetation on the site with additional plantings. The proposal does not include the removal of any significant landscape features.

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 provides far greater than required soft landscaped areas and is compliant with the above ground open space control. The landscaping on the site, subject to conditions, is suitable to maintain the landscape character of the locality.

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 will not result in any unreasonable loss of sunlight or privacy. The proposed 4 Angophora Costata will result in the significant obstruction of views from the properties to the rear at their mature height. It is recommended these trees be deleted from the landscape plan to ensure reasonable view sharing with the locality. The proposal subject to the conditions of consent will 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:

The proposed landscape areas are suitable to maximise water infiltration on-site.

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 or the degradation of private and public open space.

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

Comment:

The proposed landscaping is suitable to maximise the 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.



4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Description of non-compliance

The Manly DCP 2013 permits a maximum width of garage structures of 6.2m on this site. The proposed garage incorporating the waste management area is a width of 9m.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposed parking is accessible and adequate to service the dwelling.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposed number of parking spaces provided will minimise the demand for on street parking.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed parking is below the proposed dwelling and incorporated into the design of the development. The proposed garage is setback 5.2m-7.2m from the street front boundary which is separated from the road by an 8m road reserve. The properties at 54 and 56 Peronne Avenue have garage structures on the front boundary that extend for the entire frontage. The proposal is further setback and reduced in width to what would be consistent with the streetscape. As such the proposed garage will not result in any unreasonable impacts on the streetscape. The proposed parking is integrated into the design of the development and located to minimise its visual impact on the streetscape. The proposed design will allow efficient, safe and convenient access.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The excavation for the proposed parking was supported by a geotechnical report that provided recommendations to ensure the development could be undertaken without unreasonable impacts to the locality.

Objective 5) To ensure the width and number of footpath crossings is minimised.

DA2018/1018

Page 28 of 42



Comment:

The proposal will maintain the existing driveway access.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The proposal suitably integrates landscaping into the design of the development.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

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.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

The Manly DCP 2013 limits excavation to 1m with the exception of swimming pools and basement parking areas. The proposal requires up to 6.6m of excavation for the lift and 6m of excavation for the entry foyer attached to the garage.

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 the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, "cut and fill" and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment

The proposal will maintain the existing ground levels of the land surrounding the development. This will



ensure the topographic landscape of the locality is retained and is able to be read from the street. The maintenance of the existing ground levels and the proposed landscaping will also ensure the development maintains the landscape character of the locality. The proposal was supported by a geotechnical report that determines that the excavation is suitable for the site. This has been included as a consent document.

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 DA2018/1018 for Demolition work and construction of a dwelling house, on land at Lot 11 DP 29355, 52 Peronne Avenue, 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
171001 Site Plan	14/06/2018	Peter Downes Designs
171002 Level 1	14/06/2018	Peter Downes Designs
171003 Level 2	14/06/2018	Peter Downes Designs
171004 Level 3	14/06/2018	Peter Downes Designs
171005 Level 4	14/06/2018	Peter Downes Designs
171006 North Elevation	14/06/2018	Peter Downes Designs
171007 South Elevation	14/06/2018	Peter Downes Designs
171008 West Elevation	14/06/2018	Peter Downes Designs
171009 East elevation, schedules and notes	14/06/2018	Peter Downes Designs
171010 Section 1	14/06/2018	Peter Downes Designs
171011 Section 2	14/06/2018	Peter Downes Designs

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 900609S_02	08/06/2018	Victor Lin and Associates Pty Ltd
Assessment of Significant Trees Located within 52 Peronne Avenue, Clontarf	20/12/2017	Malcolm Bruce B.A. Consultant Arborist
Geotechnical Assessment	20/12/2017	Ascent Geotechnical Consulting

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.
- d) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
L/01 Landscape Plan	20/12/2017	Aspect Developments Pty Ltd

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

DA2018/1018

Page 33 of 42



- 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 \$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.

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

5. Stormwater Disposal

Engineering Plans 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. Stormwater shall be conveyed from the site to Peronne Avenue. 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.

6. 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.

7. **Pre-commencement Dilapidation Report**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public and private properties, shared driveway and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's and Private Party's Infrastructure during construction.

8. **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)

9. **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)

10. **Amendments to Approved Plans**

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

- The four proposed *Angophora Costata* are to be deleted from the plans
- A 1.65m privacy screen is to be provided on the northern elevation of the level 4 balcony for a depth of 3.5m from the adjoining northern wall.
- The window W5 is to be translucent to a height of 1.65m above finished floor level.

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

Reason: To ensure development minimises the loss of privacy and views from surrounding land. (DACPLB02)

DA2018/1018

Page 36 of 42



CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. Tree Protection

- A) Existing trees and vegetation shall be retained as follows:
- i) all trees and vegetation within the site, nominated on the plans and as recommended in the Assessment of Significant Trees report prepared by Malcolm Bruce Consulting Arborist, 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 retain and protect significant planting on development sites.

12. Construction Traffic Management Plan

A Construction Traffic Management Plan (CTMP) is to be provided to Council prior to the commencing any site works . The CTMP is to ensure that the impact of the public domain, in particular with respect to the temporary interruption to vehicular and pedestrian traffic on the narrow street frontage is minimised. The CTMP must ensure that public safety is maintained at all times and interruption to the use of public space is minimised.

The CTMP is to include but not be limited to the following:

- o Access to site for different stages of construction.
- o Deliveries of materials to be undertaken within the site during construction
- o All construction activity to be occurred within the site with no provision of Works Zone from Council
- o Proposed truck routes and truck access to site

Reason: To ensure public safety and minimisation of the interruption to the use of public space. (DACPLDPC1)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. Traffic Control During Works

DA2018/1018

Page 37 of 42



Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

14. **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.

15. **Protection of Adjoining Property - Excavation**

Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.

Reason: To ensure private and public safety

16. **Protection of rock outcrops**

All rock outcrops are to be retained and protected during all construction stages.

Reason: to preserve natural landscape features.

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

17. **Landscape Completion**

a) Landscaping is to be implemented in accordance with the Landscape Documents prepared by Aspect Designs, drawing L/01.

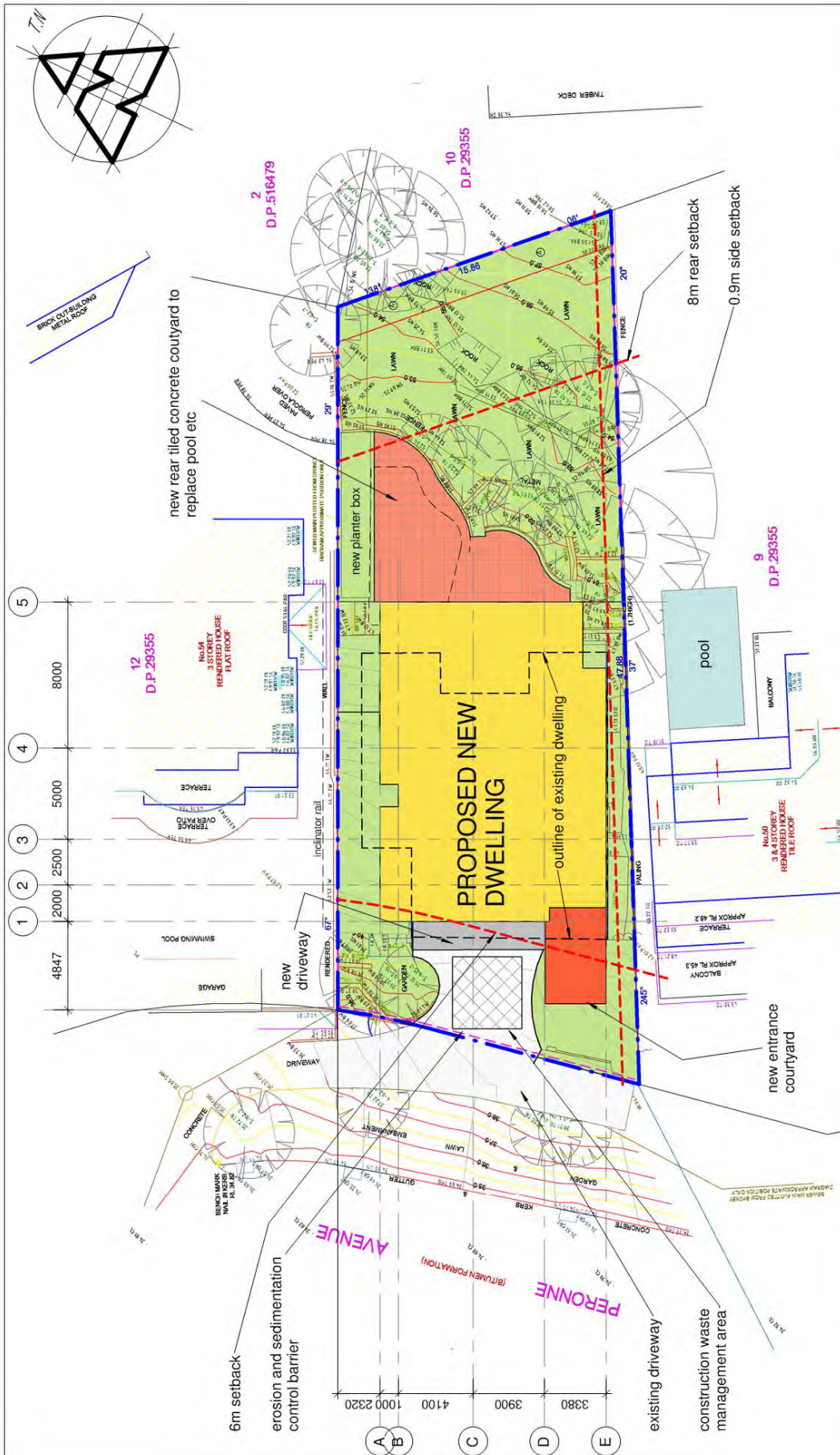
b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the landscape plan and inclusive of any conditions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

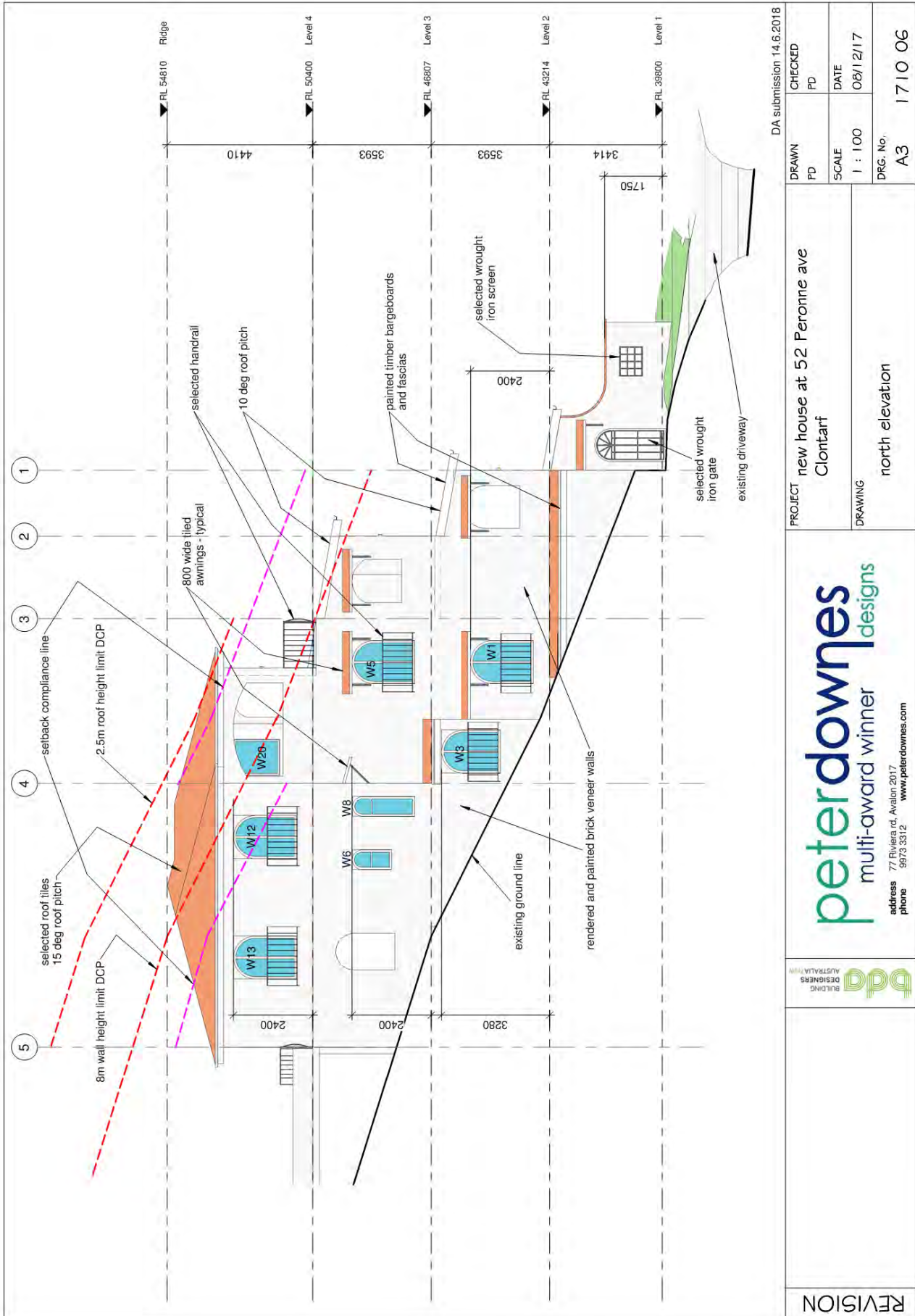
Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

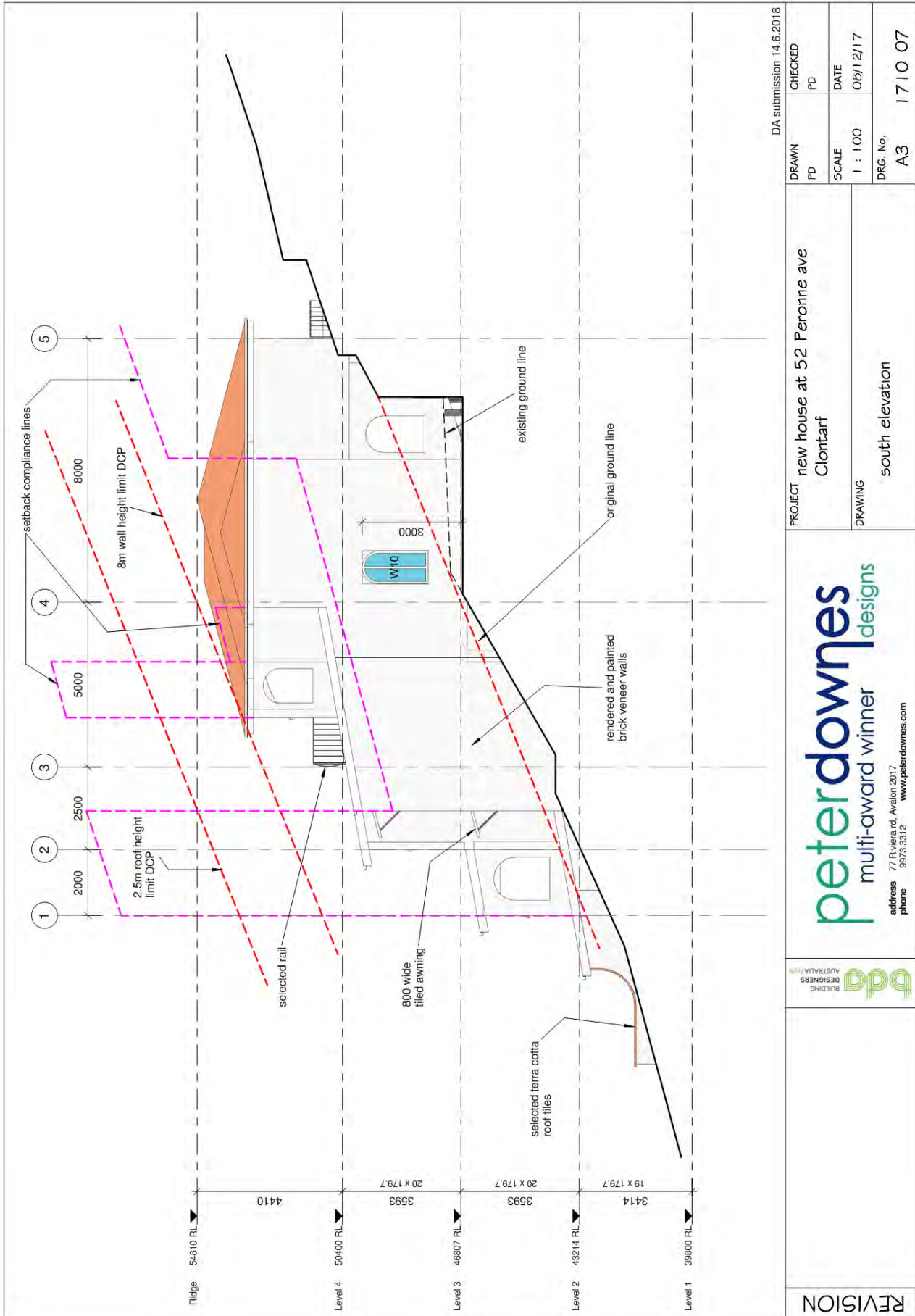
18. **Stormwater Disposal**

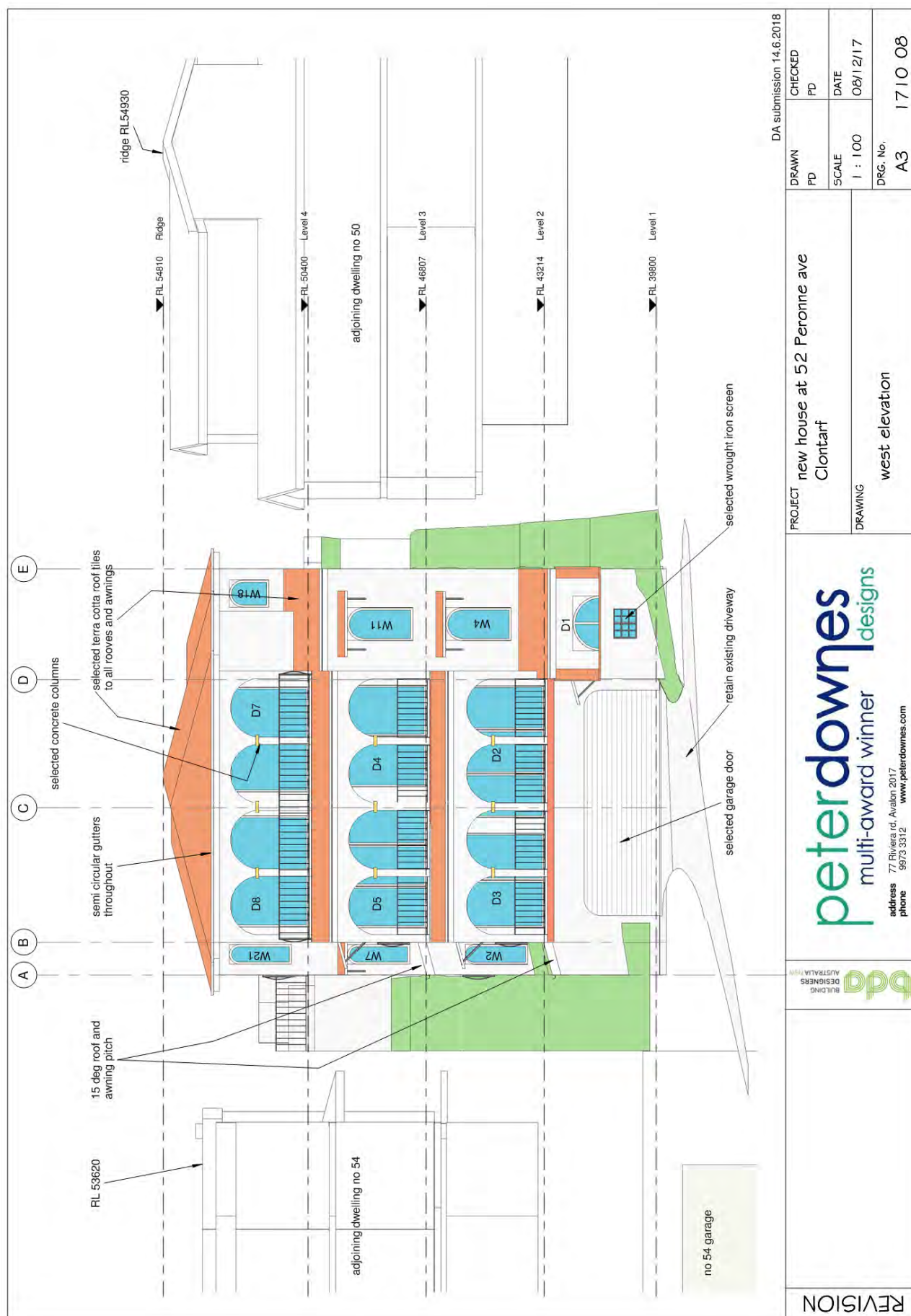
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development







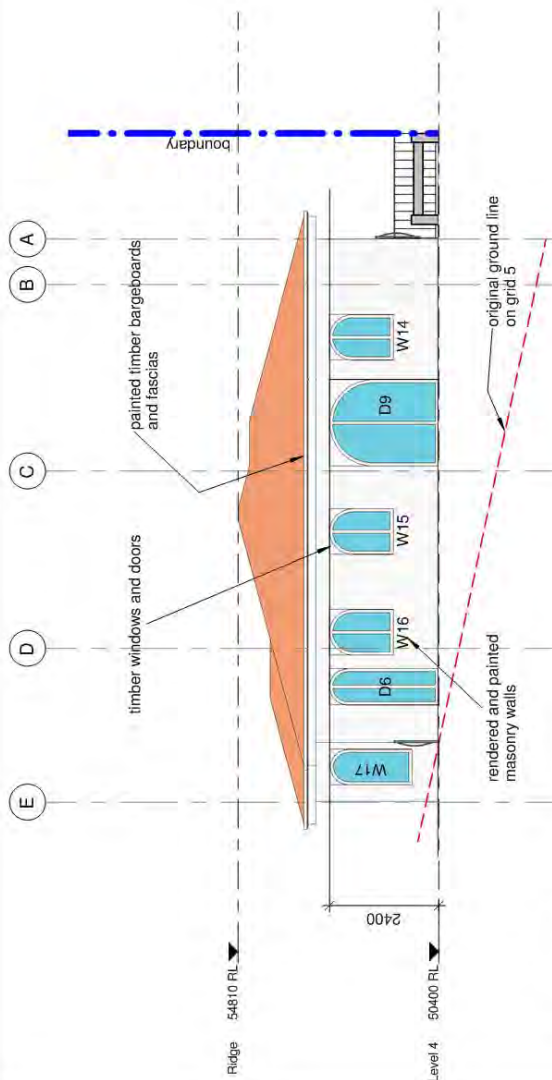


WINDOW AND DOOR SCHEDULE

W1 1300w x 1900h	arch top swing
W2 600w x 1900h	arch top swing
W3 1300w x 1900h	arch top swing
W4 1000w x 2000h	arch top fixed
W5 1300w x 1900h	arch top swing
W6 1300w x 1900h	arch top fixed top, awning bottom
W7 600w x 1900h	arch top fixed
W8 600w x 1900h	arch top fixed top, awning bottom
W9 800w x 1500h	2 panel sliding
W10 1000w x 2000h	arch top swing
W11 1000w x 2000h	arch top fixed
W12 1300w x 1900h	arch top swing
W13 1300w x 1900h	arch top swing
W14 1000w x 1400h	arch top swing
W15 1000w x 1400h	arch top swing
W16 1000w x 1400h	arch top swing
W17 800w x 1800h	arch top fixed
W18 800w x 1200h	arch top fixed
W19 not used	
W20 1100w x 1400h	fixed
W21 600w x 1900h	arch top fixed

D1 1640w x 2540h	selected front door - arch top
D2 3900w x 2400h	3 panel glass stacker
D3 2800w x 2400h	2 panel glass slider
D4 3000w x 2400h	2 panel glass slider
D5 3670w x 2400h	3 panel glass stacker
D6 800w x 2400h	glazed arch top double swing
D7 3200w x 2400h	2 panel glass slider
D8 3400w x 2400h	2 glass slider
D9 1900w x 2400h	arch top glass swing doors
D10 820w x 2400h	selected timber door - arch top

All windows and doors to be timber and fitted with draft seals
Glazing to be in accordance with BASIX and ABSA certificates.



BUILDING NOTES

All work to be carried out by suitably licensed and qualified tradesmen, and to comply with all relevant standards and Councils requirements.

Main contractor to be responsible for obtaining all necessary inspection certificates.

An approved sedimentation control system is to be installed and maintained for the duration of the contract (refer to ESCP).

Smoke alarms are to be fitted in accordance with Building Code of Australia requirements.

Termite protection is to be in the form of a physical barrier (eg Termimesh or similar) - no chemical barriers to be used.

DEMOLITION NOTES

existing house, garage, stairs, paths etc to be demolished

adjoining properties to be adequately protected at all times

asbestos (if encountered) is to be disposed of in an approved and proper manner



TYPICAL INTERNAL DOOR
820 x 2400

REVISION	 address 77 Riviera rd. Avalon 2017 phone 9973 3312 www.peterdownes.com		PROJECT new house at 52 Peronne ave Clontarf		DRAWN PD		CHECKED PD		DA submission 14.6.2018	
			DRAWING east elevation, schedules and notes		SCALE 1 : 100		DATE 09/12/17		DRG. No. A3 1710 09	