

# 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 10 OCTOBER 2018**



**Ashleigh Sherry**  
**Manager Business System and Administration**



**Agenda for a Meeting of the Development Determination Panel  
to be held on Wednesday 10 October 2018  
in the Walamai Room, Civic Centre, Dee Why**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Development Determination Panel held 26 September 2018	
<b>3.0</b>	<b>DEVELOPMENT DETERMINATION PANEL REPORTS .....</b>	<b>5</b>
3.1	DA2018/0850 - 3 Wollombi Road, Bilgola Plateau - Alterations and additions to a dwelling house including the construction of a new detached garage, secondary dwelling and swimming pool .....	5
3.2	DA2018/0628 - 8 Bower Street, Manly - Alterations and additions to an existing dwelling house including a secondary dwelling .....	47
3.3	DA2018/1187 - 4 Pacific Parade, Manly - Alterations and additions to an existing semi-detached dwelling including a swimming pool .....	108
3.4	DA2018/1043 - 57 Robertson Road, Scotland Island - Alterations and additions to an existing boat shed .....	134
3.5	DA2018/0339 - 2 Macpherson Street, Warriewood - Community Title subdivision of 1 lot into 24 lots, inclusive of 22 lots for future dwelling houses .....	161

## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 26 SEPTEMBER 2018**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Development Determination Panel held 26 September 2018 were approved by all Panel Members and have been posted on Council's website.

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### **3.0 DEVELOPMENT DETERMINATION PANEL REPORTS**

<b>ITEM 3.1</b>	<b>DA2018/0850 - 3 WOLLOMBI ROAD, BILGOLA PLATEAU - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING THE CONSTRUCTION OF A NEW DETACHED GARAGE, SECONDARY DWELLING AND SWIMMING POOL</b>
<b>REPORTING MANAGER</b>	<b>ANNA WILLIAMS</b>
<b>TRIM FILE REF</b>	<b>2018/630717</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report</b> <b>2 Site Plan and Elevations</b>

#### **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.

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#### **RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority grant Development Consent to DA2018/0850 for alterations and additions to a dwelling house including the construction of a new detached garage, secondary dwelling and swimming pool on land at Lot 192 DP 16902, 3 Wollombi Road, Bilgola Plateau, subject to the conditions outlined in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/0850
<b>Responsible Officer:</b>	Claire Ryan
<b>Land to be developed (Address):</b>	Lot 192 DP 16902, 3 Wollombi Road BILGOLA PLATEAU NSW 2107
<b>Proposed Development:</b>	Alterations and additions to a dwelling house including the construction of a new detached garage, secondary dwelling and swimming pool
<b>Zoning:</b>	E4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Development Determination Panel
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Claudio Hernan Encina Lucy Marie Encina
<b>Applicant:</b>	MacKenzie Architects International
<b>Application lodged:</b>	23/05/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New second occupancy
<b>Notified:</b>	31/05/2018 to 18/06/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 902,206.50

### 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;

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- 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 - 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 - D3.6 Front building line  
Pittwater 21 Development Control Plan - D3.7 Side and rear building line  
Pittwater 21 Development Control Plan - D3.9 Building envelope

#### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 192 DP 16902 , 3 Wollombi Road BILGOLA PLATEAU NSW 2107
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the eastern side of Wollombi Road.</p> <p>The site is irregular in shape with a frontage of 15.4m along Wollombi Road and an average depth of 56m. The site has a surveyed area of 865.2m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two-storey detached dwelling and carport.</p> <p>The site slopes approximately 12m from west to east and contains some significant mature vegetation in the front and rear yards.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by one- and two-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:

- Application N0384/00 for a single storey addition comprising a double garage and portico, a 1st floor extension comprising a bedroom, ensuite and balcony and a 2 storey addition comprising a family room and rumpus room was approved on 28 July 2000 under delegation.
- Application N0524/08 for alterations and additions to the existing dwelling including a new studio, pool and garage was approved on 10 December 2008 under staff delegation.

#### **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks consent for the following works:

- Demolition of existing carport and construction of a new double garage;
- New lower ground floor to existing sub-floor of the existing dwelling, with new patio;
- Extension and internal reconfiguration of the existing ground and first floors of the existing dwelling;
- Alteration to the roof form;
- Construction of a swimming pool with terrace;
- Landscaping works; and
- Construction of a secondary 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)**

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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&amp;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&amp;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&amp;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&amp;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&amp;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&amp;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&amp;A Regulation 2000 requires the</p>



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

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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

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

#### MEDIATION

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

#### REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	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

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Internal Referral Body	Comments
	inclusion of the attached conditions of approval and consideration of the notes below.  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.
Landscape Officer	Council's Landscape division has assessed the proposal against the Pittwater 21 DCP 2014 Control - B4.22 Preservation of Trees and Bushland Vegetation C1.1 Landscaping, and believes the proposed development complies subject to conditions, as recommended.
NECC (Bushland and Biodiversity)	Council's Bushland & Biodiversity division has assessed the proposal against Pittwater LEP 2014 Control 7.6 Biodiversity Protection & Pittwater 21 DCP 2014 Control B1.4 Aboriginal Heritage Significance, B4.2 Flora & Fauna Conservation Category 1 & Wildlife Corridors, B4.4 Flora & Fauna Enhancement Category 2 & Wildlife Corridors and believes the proposed development complies subject to conditions, as recommended.
NECC (Development Engineering)	The subject site appeared to be burdened by a Council stormwater asset, however investigation and a site inspection revealed that this was not the case. The proposed development requires OSD and the submitted concept plan is satisfactory. The property is also lower than the road and as such the disposal of stormwater is to be in accordance with Council's DCP B5.10 which has been conditioned. The proposed driveway grade has been assessed and is also satisfactory subject to conditions. No objection to approval, subject to conditions as recommended.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\***

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

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

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



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

### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered 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 PLEP 2014 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 as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal 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:	

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(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.	<b>Consistent.</b> The site is located within the E4 Environmental Living and, as such, the proposed use is permissible with consent under PLEP 2014.
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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.	<b>Consistent.</b> 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 there being on the land the principal dwelling and secondary dwelling only.
(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 <sup>2</sup> 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.	The proposed secondary dwelling has a total floor area of 31sqm, in accordance with Clause 5.4(9) of the PLEP 2014.
(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 proposed secondary dwelling is wholly separate from the principal dwelling. The subject site has an area of 865.2sqm. The proposed development is compliant in relation to parking requirements.

**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.	<b>Consistent.</b> This application does not propose any subdivision of the existing allotment.

Conclusion

The proposed development is in accordance with the *State Environmental Planning Policy (Affordable Rental Housing) 2009* and is therefore supported for approval.

**SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate Nos. A306288 dated 4 April 2018 and 900978S dated 6 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 (dwelling)	8m	5.6-8m	N/A	Yes
Height of Buildings (secondary dwelling)	5.5m	6.4m	16.36%	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
5.4 Controls relating to miscellaneous permissible uses	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**

See comments in the section of this report relating to Clause 4.6 Exceptions to development standards of the PLEP 2014.

##### **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:	5.5m
Proposed:	6.4m (secondary dwelling)
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	16.36%

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 alterations and additions to the existing dwelling (compliant with this clause) and associated works, and a secondary dwelling. Existing development surrounding the subject site is of a similar or greater bulk and scale, being predominantly two-storey detached dwellings with similar building footprints. Further, Clause A4.3 Bilgola Locality allows for secondary dwellings within the Bilgola Plateau locality. As such, the proposed development 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*

Comment:

As above, the nearby development consists of predominantly two-storey detached dwellings of a similar scale proposed development. The proposed secondary dwelling is compliant with all built form controls, with the exception of a breach to the rear building line control, which is acceptable for the reasons detailed in the section of this report relating to Clause D3.7 Side and Rear Building Line of the P21 DCP. As such, the proposed height and scale of the proposed development is generally compliant and consistent with the height and scale of nearby development.

*c) to minimise any overshadowing of neighbouring properties*

Comment:

The proposed secondary dwelling does not result in overshadowing of adjacent properties in the morning or during the middle of the day. The proposal results in minor overshadowing of the rear yard of the property to the south (No. 5 Wollombi Road). As such, the proposal does not result in significant or unreasonable overshadowing of neighbouring properties.

*d) to allow for the reasonable sharing of views*

Comment:

The proposed secondary dwelling is designed so as not to impact on view sharing for the subject site or adjacent sites.

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

Comment:

The proposed secondary dwelling responds sensitively to the natural topography, as it relies on pier and beam construction rather than excavation. In this way, the proposal is consistent with Clause D3.14 Construction, Retaining Walls, Terracing and Undercroft Areas of the P21 DCP, which is of particular importance in the E4 Environmental Living zone.

*f) to minimise the adverse visual impact of development on the natural environment, heritage*



*conservation areas and heritage items*

Comment:

The proposed secondary dwelling is not compliant with the height of building control in relation to a portion of the steeply sloped roof form, towards the ridge only. As such, the predominant bulk of the proposed secondary dwelling is compliant and 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:

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

Comment:

The proposed development is low-impact in that earthworks are generally restricted to the pool area and extension of the existing subfloor of the existing dwelling. The proposed secondary dwelling, being non-compliant with the height of buildings development standard, does not rely on significant earthworks. Further, the proposed secondary dwelling does not result in any unreasonable amenity impacts on the subject site or adjacent sites.

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

Comment:

As above, the proposed secondary dwelling does not result in any unreasonable amenity impacts on the subject site or adjacent sites. The secondary dwelling is compliant in relation to overshadowing, privacy, and view sharing.

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

Comment:

The secondary dwelling is proposed in association with alterations and additions to the existing dwelling. The entire works proposed retain the use of the site for low density residential purposes. The proposed secondary dwelling is adequately integrated with the landform and landscape in that it does not rely on significant earthworks, is set well below the general tree canopy height in the locality, and is to be constructed in conjunction with suitable landscaping works and vegetation.

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

Comment:

The proposed development includes adequate landscaping and vegetation in order to support and protect wildlife corridors in the locality.

**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 secondary dwelling provides a better outcome than a compliant development with inclusion of a reduced building footprint than if the loft floor space was included at ground level. In this way, the proposed development reduces the impact of earthworks on the site. Further, the proposal provides for additional affordable housing in the locality without resulting in any unreasonable impacts on the subject site or adjacent sites.

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

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

Comment:

The applicant has provided the following written request justifying the contravention of the height of building development standard:

*"Introduction*

*This clause 4.6 variation supports plans submitted with the development application for alterations and additions to existing dwelling and construction of a secondary dwelling at 3 Wollombi Road, Bilgola Plateau. The clause 4.6 variation addresses the following plans:*

- *Architectural Plans and Shadow Diagrams numbered A100 – A101, A200, A300 and A400 – A401 dated 28 March 2018 prepared by Mackenzie Architects International.*

*The architectural plans prepared by Mackenzie Architects International confirms the following:*

- *Proposed height of secondary dwelling: 5.75m – 6.76m.*

*In accordance with the above the proposed secondary dwelling seeks variation to the height of buildings development standard contained in clause 4.3(2FA) – Height of Buildings of the Pittwater LEP 2014. Clause 4.3(2FA) of the Pittwater LEP 2014 applies to all secondary dwellings in the E4 – Environmental Living zone as follows:*

*Despite subclause (2), the maximum height for a secondary dwelling or a rural worker's dwelling in Zone E4 Environmental Living or Zone RU2 Rural Landscape is 5.5 metres if the secondary dwelling or rural worker's dwelling is separate from the principal dwelling.*



*The application to vary the development standard – height of buildings incorporates the relevant principles in the following judgements:*

1. *Winten Property Group Limited v North Sydney Council (2001) 130 LGERA 79*
2. *Wehbe v Pittwater Council (2007) 156 LGERA 446, and*
3. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009.*

*As listed above the proposed secondary dwellings has a maximum height of 5.75m – 6.76m. The secondary dwelling has a permissible height of 5.5m.*

*What are the objectives of Clause 4.6?*

*The objectives of clause 4.6 – Exceptions to development standards are:*

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

*The proposed variation to the height of buildings development standard is consistent with the objectives of clause 4.6 as follows:*

*Objective (a): The proposed secondary dwelling confirms an appropriate degree of flexibility can be applied based on the following assessment:*

- *The variation to the building height of the secondary dwelling is largely a result of site topography with the maximum variation at the eastern edge of the proposed secondary dwelling roof form. Given the site topography a degree of flexibility can be applied given the existing conditions of the site.*

- *It is noted that the building height measured from natural ground level complies with the 8m height control for the site, and in this case flexibility can be applied to the development standard.*

*Objective (b): The variation to the height of the secondary dwelling is not visible from the street frontage- Wollombi Road, noting the secondary dwelling is located at the rear of the site and the roof ridge of the secondary dwelling (RL104) is located 5m below the Wollombi Road street level (RL109) and will not impact on the streetscape setting of the E4 – Environmental Living zone.*

*The secondary dwelling is single storey with loft area within roof and does not result in any negative amenity impacts to surrounding properties noting compliance with the overall dwelling height, landscape and private open space development controls.*

*It is of the opinion the variation to the height of buildings development standard is appropriate for the subject site, allowing for flexibility in the application of the height of buildings development standard to the proposed secondary dwelling built form.*

*The proposed secondary dwelling enhances the residential amenity of development on the site and is compatible with housing in the locality and ensures the proposed secondary dwelling achieves a good design outcome in a landscape setting.*

*Compliance with the development standard is unreasonable or unnecessary in this particular case?*

*Pursuant to clause 4.6(3)(a) of the LEP the variation to the height of buildings development standard is acceptable in the circumstances of this case and compliance with the development standard is considered unreasonable and unnecessary because it meets the objective of the height of buildings standard even though it does not strictly comply.*

*The objectives of the development standard are at clause 4.3(1) of the Willoughby LEP 2012 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.

The secondary dwelling meets the relevant objectives of the height of buildings development standard based on the following assessment:

- Objective (a): The proposed secondary dwelling is a small single storey building with GFA 32.7m<sup>2</sup> located at the rear north-east corner of the and is not visible from the public domain- Wollombi Road, noting the site falls approximately 11m from the front boundary to the rear boundary. The proposed building height does not adversely affect the environmental capacity of the subject site, and the form and scale of the proposed development is compatible with development in the immediate locality.
- Objective (b): Due to existing site topography the proposed secondary dwelling will not be visible from the public domain- Wollombi Road, noting the roof ridge of the secondary dwelling is located 5m below the Wollombi Road street level. The secondary dwelling is subservient to the dwelling house and maintains a landscape setting to Wollombi Road. The proposed single storey secondary dwelling is compatible with residential development located within visual catchment of the site. Due to the site slope the additional height of the pitched roof of secondary dwelling will be visually recessed from neighbouring property to the north
- Objective (c): The proposed secondary dwelling is single storey and will not result in any unreasonable overshadowing to neighbouring properties. The shadow cast from the proposed secondary dwelling is generally contained within site boundaries.
- Objective (d): The proposed secondary dwelling will not obstruct existing views or vistas noting the secondary dwelling is located at the rear of the site and is single storey. Due to the steep topography of the site, the secondary dwelling is recessed 5m below street level and will not obstruct existing view corridors from street. Furthermore the roof ridge is located 1m below the deck height of adjoining property to the north 1 Wollombi Road.
- Objective (e): The proposed secondary dwelling has been designed with a small floor plate and a loft area in roof to follow the sites natural topography and minimise impact on landscape setting, noting there is an approximate 1m fall across the 5.8m length of the secondary dwelling.
- Objective (f): The proposed secondary dwelling will not result in visual impacts to the adjoining properties or Wollombi Road streetscape noting the building is visually recessed from the street and is located at the rear of the site, subservient to the primary dwelling.

Are there sufficient environmental planning grounds to justify contravening the development standard?

Pursuant to clause 4.6(3)(b) of the LEP the environmental planning grounds contained in this application are sufficient to justify the variation to the height of buildings development standard because:

- The variation to the 5.5m secondary dwelling height control is a result of the site topography, noting the secondary dwelling is located at the rear of the site and the roof ridge of the secondary dwelling (RL104) is located 5m below the street level- Wollombi Road (RL109).
- The additional height of the secondary dwelling will not be read from the adjoining properties noting the finished ground line includes a 1m retaining wall at the western edge of the building and the building is a small floor plate, recessed into the site slope to minimise visual dominance within the landscaped setting.
- The additional height presents an acceptable form and scale of development on the site that is compatible with housing in the locality. The proposed secondary dwelling is single storey with loft contained within pitched roof form and complies with the 8m building height control for the overall site.
- The secondary dwelling is subservient to the dwelling house due to the existing site topography and its location at the rear north-east corner of the site. The secondary dwelling is surrounded by landscaping and adequate setbacks are provided to adjoining properties, mitigating bulk and scale impacts to the adjoining properties.
- The additional height of the secondary dwelling will not result in unreasonable overshadowing



impacts to the adjoining property with the shadow diagrams confirming shadow cast from the secondary dwelling is generally confined within site boundaries and the adjoining property – 5 Wollombi will retain 3 hours of solar access at mid-winter.

- The proposed secondary dwelling maintains visual privacy to neighbouring dwellings noting the loft area is orientated across the site.
- The proposed secondary dwelling is an acceptable design for the Bilgola Plateau locality and the landscape works contribute to the landscape setting ensuring the built form will be subservient when viewed from the public domain – Wollombi Road.

*Is the proposed Development in the public interest?*

Clause 4.6(4)(ii) of the LEP states:

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

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Secretary has been obtained.

The objectives of the E4 - Environmental Living zone are:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To provide for residential development of a low density and scale integrated with the landform and landscape.
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

The proposed alterations and additions to the dwelling house and new secondary dwelling meet the relevant objectives of the E4 – Environmental Living zone based on the following assessment:

- The existing use of the site as a residential dwelling is retained and new secondary dwelling provides additional form of on site accommodation;
- The secondary dwelling is recessed into the site slope subservient to the existing dwelling and the pitched roof design will complement the existing dwelling typologies in the immediate streetscape;
- The small floor plate of the secondary dwelling maximizes the landscape setting of the site and minimizes visual intrusion;
- The proposed alterations and additions and secondary dwelling retains the landscape setting of the site when viewed from the public domain- Wollombi Road, noting height difference across the site; and
- The development proposal will not result in unreasonable amenity impacts to the adjoining properties.

Further, in relation to clause 4.6(a)(ii) of the LEP, the proposed secondary dwelling is in the public interest because it is consistent with the objectives of the applicable height of buildings standard and the objectives for development in the E4 – Environmental Living zone for the following reasons:

- The proposed built form and scale results in a development form that is compatible with housing in the immediate locality and presents an acceptable design outcome on the subject site.
- The proposed secondary dwelling will not be visible from Wollombi Road due to existing site topography. It should also be noted, the roof ridge of the secondary dwelling is located 5m below the Wollombi Road street level. The secondary dwelling presents as a single storey building



*within the site and will not result in unreasonable amenity impacts with regard to overshadowing or loss of views-outlook being consistent with the objectives of the Pittwater LEP 2014, the E4 – Environmental Living zone and the height of buildings development standard.*

#### Conclusion

*The development proposal satisfies the criteria for allowing a variation of the height of buildings development standard contained in Clause 4.3(2FA) of the Pittwater LEP 2014.*

*The proposed built form of the secondary dwelling is single storey and due to existing site topography will not be visible from the public domain- Wollombi Road ensuring the bulk and scale of development is appropriate for the subject site and consistent with the housing in the immediate locality.*

*The proposed development improves the architectural merit of development on the site. The small floor plate with pitched roof of the secondary dwelling and proposed landscape works ensures the site will be viewed in a landscape setting.*

*It is of the opinion, the application to vary the height of building development standard – secondary dwellings is well founded and, as addressed, the proposed secondary dwelling meets the objectives of the height of buildings development standard, achieving a better development outcome for the subject site that is in the public interest. In this case in accordance with the environmental planning grounds addressed in this application, the variation to the height for the proposed building can be supported."*

(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 above written justification demonstrates that compliance with the height of buildings development standards is unreasonable and unnecessary in the circumstances of the case, given the variable topography and slope of the site, the minor nature of the non-compliance, and that the proposal does not result in any unreasonable impacts on the subject site or adjacent sites. Further, the proposal meets the objectives of the zone and the development standard. The above justification is considered well-founded.

*(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.

*(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

###### Dwelling House:

Built Form Control	Requirement	Proposed
Front building line	6.5m	5.7-6.5m to garage 12.1m to dwelling
Rear building line	6.5m	18.7m
Side building line	2.5m	1.5m (south)
	1m	1m (north)
Building envelope	3.5m	Outside envelope (south)
	3.5m	Outside envelope (north)
Landscaped area	60%	60.4% (523sqm incl. 6% impervious va

###### Secondary Dwelling:

Built Form Control	Requirement	Proposed
Rear building line	6.5m	3.5m
Side building line	2.5m	10.3m (south)
	1m	1m (north)
Building envelope	3.5m	Within envelope (south)
	3.5m	Within envelope (north)

**\*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	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor	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
B5.1 Water Management Plan	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.5 Off-Street Vehicle Parking Requirements - Low Density Residential (Amended 14/11/15 See B6.3)	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
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	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	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	No	Yes
D3.7 Side and rear building line	No	Yes
D3.9 Building envelope	No	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D3.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D3.15 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

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#### C1.4 Solar Access

The proposed alterations and additions to the existing dwelling house result in additional overshadowing to the northern windows and to the rear private open space of the property to the south, at No. 5 Wollombi Road. The proposed secondary dwelling results in negligible overshadowing to the rear yard of No. 5 Wollombi Road in the afternoon only. Where the orientation or shape of a lot precludes northerly orientation (as in this case), reasonable solar access will be assessed on a merit basis. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

*Residential development is sited and designed to maximise solar access during mid-winter. (En)*

The existing dwelling and the proposed alterations and additions to the dwelling are generally centralised on the site between north and south, thereby providing equitable solar access to the subject site and the property to the south, considering the east-west orientation of the subdivision pattern in the area. The proposed development results in a minor non-compliance to the front building line control to the garage, though this does not contribute to overshadowing of neighbouring sites. The proposed alterations to the existing dwelling rely on existing non-compliance with the southern side building line and southern building envelope. The alterations and additions to the dwelling result in overshadowing to the northern windows of the property to the south throughout the day, and additional overshadowing to the rear yard in the afternoon. However, the submitted shadow diagrams demonstrate that the northern windows to the property to the south are already predominantly (if not wholly) in shadow by the existing development. Further, the additional overshadowing to the rear yard of the property to the south is acceptable, as more than three hours of solar access to the yard is retained. The proposed development results in a non-compliance with the northern building envelope. However, this non-compliance, being on the northern elevation, does not result in unreasonable overshadowing. Finally, the proposed development is compliant with the landscaped area control, indicating that the proposed development does not include unreasonable bulk on the site. As such, the proposal demonstrates adequate design in order to maximise solar access during mid-winter.

*A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)*

As above, the northern windows to the property to the south of the subject site is overshadowed by the proposed development. However, these windows are predominantly overshadowed by the existing development. The proposal retains more than three hours of solar access to the rear yard of the property to the south. Given the prevailing east-west orientated subdivision pattern, the northern windows to the property to the south at No. 5 Wollombi Road are particularly vulnerable to overshadowing resulting from development of No. 3 Wollombi Road. To refuse development at No. 3 Wollombi Road based on overshadowing as a result of the subdivision pattern to the south would be unreasonably preclusive. The proposed development is considered acceptable in the context of the site and surrounding sites, and considering the proposal's compliance (and existing non-compliance) with built form controls.

*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.

#### C1.5 Visual Privacy

The proposed development includes ground floor deck to within 2.25m of the northern boundary and 1.5m of the southern boundary, and a first floor balcony to within 1.68m from the southern boundary, where direct overlooking is to be prevented within 9m from the development. 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 proposal includes a narrow balcony on the eastern elevation at the first floor level, accessed via proposed first floor bedrooms, extending to 1.68m from the southern boundary. However, the dimensions of this balcony indicate casual and passive use, being 1.2m in depth. Further, the balcony is not adjacent to a living area. It is anticipated these decks are for the purpose of gaining greater access to light and air for the bedrooms than for entertaining use. As such, the risk of overlooking from the balcony is low and acceptable. The proposal also includes a larger deck at the ground floor level, accessed via the kitchen, dining room and living room, extending to 2.25m from the northern boundary and 1.5m to the southern boundary. It is anticipated that this larger deck will be used for entertaining purposes and that the overlooking risk to the north is greater than that of the bedrooms' balcony. However, overlooking is mitigated through proposed significant boundary planting. To require a privacy screen to the north elevation of the ground floor deck would result in an undesirable design outcome, as it would unreasonably restrict solar access to this outdoor living area. Further, the proposed angled layout of the ground floor deck discourages direct viewing to the north. To require privacy screening to the southern elevation of the ground floor deck is unreasonable, given the reduced dimensions of the deck at this point (being 1.6m in depth). As such, the proposal is assessed as providing good design that adequately responds to the visual privacy of adjacent properties.

*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.

#### **D3.6 Front building line**

The proposed garage has a front setback of between 5.7-6.5m, where a minimum of 6.5m is required. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

*Achieve the desired future character of the Locality.*

The proposed development is consistent with the streetscape, in that a number of existing nearby developments include a breach of the front building line for the purpose of car parking structures. Further, the proposed development complies with the requirements of Clause A4.3 Bilgola Locality of the P21 DCP, so is consistent with the desired future character of the locality.

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

The proposed garage is set below the street level and is designed so as not to impact upon views and vistas to or from public or private places.

*The amenity of residential development adjoining a main road is maintained. (S)*

Not applicable. The proposed development is not located fronting a main road.

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

The proposed development includes adequate vegetation within the front setback in order to soften and reduce the visual impact of the proposed alterations and additions to the existing dwelling, and the garage.

*Vehicle manoeuvring in a forward direction is facilitated. (S)*



Given the location of the existing dwelling and the topography of the site, vehicle manoeuvring in a forward direction for both entering and exiting is not possible nor practical. The existing form of access (being forward entering and reverse exiting) is retained. The subject site is located on a relatively quiet street, so the proposed development does not pose a significant traffic risk.

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

The proposed development is consistent with existing development in the locality and in the immediate streetscape, in relation to height and bulk.

To encourage attractive street frontages and improve pedestrian amenity.

As above, the proposed development includes adequate vegetation within the front setback in order to reduce the visual impact of the proposed alterations and additions to the existing dwelling, and the garage, and provide an attractive street frontage. Pedestrian amenity is retained in that the proposal does not unreasonably amend the existing driveway or impact upon footpaths.

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

The proposed development is adequately designed and sited to respond to the spatial characteristics of the subject site and the surrounding area. The proposal steps with the topography of the land and minimises earthworks.

#### **D3.7 Side and rear building line**

The proposed development includes a side setback of 1.5m to the southern elevation, where the requirement is 2.5m. The 1.5m southern side setback is existing at each level. The existing non-compliance and the proposed alterations are comparable to setbacks in the locality, and do not offend the outcomes of Clause D3.7 Side and Rear Building Line.

#### **D3.9 Building envelope**

The proposed development includes a breach to the building envelope at both the southern and northern elevations. The building envelope breach to the southern elevation is existing. The existing non-compliance on the southern elevation and the proposed alterations are comparable to existing developments in the locality, and do not offend the outcomes of Clause D3.9 Building Envelope. The proposed non-compliance with the building envelope at the northern elevation 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 is consistent with the streetscape, in that a number of existing nearby developments are of similar bulk and scale. Further, the proposed development complies with the requirements of Clause A4.3 Bilgola Locality of the P21 DCP, so is consistent with the desired future character of the locality.

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

The existing dwelling, proposed to be altered and extended, is set down the slope from the street, minimising its visual impact. Additionally, the proposed development is of a scale that is below the height of trees in the locality.

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

The proposed alterations to the dwelling (resulting in the building envelope breach) are compliant with



the side setbacks required by the P21 DCP (with the exception of an existing non-compliance), and with the maximum height of building required by the PLEP 2014. Further, the proposal requires minimal and compliant excavation for the purpose of the swimming pool in the rear yard, and extension of the existing subfloor. As such, the proposed development is adequately designed and sited to respond to the spatial characteristics of the subject site and the surrounding area.

*The bulk and scale of the built form is minimised. (En, S)*

The proposed alterations to the dwelling (resulting in the building envelope breach) are compliant with the side setbacks required by the P21 DCP (with the exception of an existing non-compliance), and with the maximum height of building required by the PLEP 2014. Further, the proposal is compliant with the landscaped area required by the P21 DCP. This demonstrates that the proposed development does not result in unreasonable bulk on the subject site. Further, the visual impact of the proposed bulk and scale is minimised through the modulation and articulation of the built form.

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

The proposed development is adequately designed so as not impact upon views or vistas to or from public or private places.

*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 in order to retain a reasonable level of privacy, amenity and solar access to the subject site and adjacent sites.

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

The proposed landscape plan demonstrates that the subject site will be adequately landscaped in order to reduce the visual impact of the proposed built form.

#### **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**

##### **Assessing Officer's Conclusion:**

The application is referred to Council's Development Determination Panel (DDP) for determination for the following reason:

The proposed development seeks a variation to the height of building development standard within Clause 4.3 of the Pittwater Local Environmental Plan 2014. The proposed development includes a secondary dwelling to a maximum height of 6.4m, where the development standard is 5.5m for secondary dwellings in the E4 Environmental Living zone. This equates to a variation to the development standard of 16.36%. In accordance with Council delegations, applications with a variation to the height of building development standard of 10% or more are to be determined by DDP. The associated Clause 4.6 variation application adequately demonstrates that compliance with the height of



buildings development standards is unreasonable and unnecessary in the circumstances of the case, given the variable topography and slope of the site, the minor nature of the non-compliance, and that the proposal does not result in any unreasonable impacts on the subject site or adjacent sites. Further, the proposal meets the objectives of the zone and the development standard. The justification is considered well-founded.

## 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 DA2018/0850 for Alterations and additions to a dwelling house including the construction of a new detached garage, secondary dwelling and swimming pool on land at Lot 192 DP 16902, 3 Wollombi Road, 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  
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<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A100 Floor Plans	4 September 2017	Mackenzie Architects International
A101 Site / Roof Plan	4 September 2017	Mackenzie Architects International
A200 Elevations + Section	4 September 2017	Mackenzie Architects International

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
401 Sediment and Erosion Control	4 September 2017	Mackenzie Architects International
C01 Lower Ground Floor Drainage Plan	14 August 2018	Greenview Consulting

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Bushfire Risk Assessment	2 December 2017	Bushfire Planning and Design
Arboricultural Impact Assessment	10 April 2018	NSW Tree Services
Risk Analysis & Management (Geotechnical Report)	19 October 2017	Jack Hodgson Consultants

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:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA1 DA Landscape Plan	March 2018	Volker Klemm Landscape Design

<b>Waste Management Plan</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	29 March 2018	Applicant

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)

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**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.

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(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 \$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](http://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. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Jack Hodgson Consultants Pty Ltd dated 19 October 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. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

8. **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 Building Code of Australia – 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.

9. **Construction in Bush Fire Prone Areas**

The recommendations made in the Bush Fire Assessment Report prepared by Planning for Bushfire Protection, dated 30 November 2017, Report Ref No. 1203 are to be carried out in full to the building.

Plans and documentation detailing all requirements are to be provided to the Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure adequate provision is made for the design and construction of the building to reduce the risk of ignition from a bushfire.

10. **On-site Stormwater Detention**

An On-site Stormwater Detention system must be designed and constructed in accordance with Northern Beaches Council's Pittwater DCP 21 Clause B5.7 and generally in accordance with the concept drainage plans prepared by Greenview Consulting, drawing number 171220 C01 and C02 dated 14.08.18.

Detailed drainage plans are to be prepared by a qualified experienced practicing Civil Engineer, with Corporate membership of the Institute of Engineers Australia (M.I.E.) or who is eligible to become a Corporate member and has appropriate experience and competence in the related field.

The drainage plans must address the following:

- i) The discharge from the site is to be designed in accordance with the requirements of Pittwater DCP 21 Clause B5.10

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- ii) All recommendations of the Geotechnical Report by Jack Hodgson Consultants Pty Limited for stormwater Drainage are to be adopted.

Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's requirements, are to be submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of storm water and storm water management arising from the development.

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. A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. 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. **Vehicle Crossings Application**

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the driveway construction and must be paid.

Approval of the application by Council 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.

14. **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.

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

15. **Compliance with Standards**

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

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the 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**

16. **Tree protection**

All trees and vegetation on site, located on adjoining properties, and located within the road reserves must be retained and protected, except where approved for removal, or where site trees are exempt trees under the relevant planning instruments or legislation. To ensure retention and protection;

- a Project Arborist with minimum qualification equivalent to AQF Level 5 is to be appointed prior to commencement of works, to oversee all works in the vicinity of existing trees to be retained within the subject site and neighboring properties - specifically but not exclusively; Tree 1 (street tree) Tree 9-13 (located on neighboring properties),
- the Project Arborist is to oversee all tree protection measures for the existing trees identified in the Arboricultural Impact Assessment prepared by NSW Tree Services- Sam Allouche, dated 10 April 2018, including trees 1-13, and with reference to Appendix A.
- the Project Arborist is to familiarise themselves with, and ensure compliance with, any other tree and environmental requirements conditioned under this consent.
- all construction works in the vicinity of existing trees shall be conducted under the supervision of the Project Arborist.
- all tree protection shall be in accordance with the recommendations provided within the Arboricultural Impact Assessment report (as applicable) and AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4.
- tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees
- all tree protection measures, as proposed in the Arboricultural Impact Assessment, are to be in place prior to the commencement, including protective fencing and trunk protection.
- 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.
- no tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site
- all structures are to bridge tree roots greater than 50mm diameter unless directed a qualified Arborist on site
- should root severance/bridging occur during site establishment and construction works, documentary details shall be submitted by the Arborist to the Certifying Authority.



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

17. **Tree Protection Measures**

i) The trunk of each tree required to be retained under this consent must be provided with a tree guard that is comprised of hardwood timber panels each having a minimum length of 2m, minimum width of 75mm and minimum thickness of 25mm and secured, but not permanently fixed or nailed, to the tree and spaced a maximum of 80mm apart.

ii) Each tree required to be retained under this consent that is within 6m of a dwelling house, outbuilding or swimming pool must have a fence or barrier that is erected:

- (a) around its tree protection zone as defined by section 3.2 of AS 4970—2009, Protection of trees on development sites, and
- (b) in accordance with section 4 of that standard.

iii) The Principal Certifying Authority or Project Arborist must ensure that:

- (a) the activities listed in section 4.2 of that standard do not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site, and
- (b) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

iv) The tree protection measures specified in this clause must:

- (a) be in place before work commences on the site, and
- (b) be maintained in good condition during the construction period, and
- (c) remain in place for the duration of the construction works.

Note. A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: To ensure tree protection is provided and maintained

18. **Protection Fencing**

Protection fencing measures (including sedimentation fences) are to be installed in accordance with all approved plans including those specified in the Arborist report by NSW Tree Services - Sam Allouche, dated 10/4/2018. Protection measures are to be maintained for the duration of the works. Protection fencing that is no longer required is to be removed once all works are completed.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to commencement of works.

**Reason:** Environmental Protection

19. **Runoff and Sediment Control**

Appropriate runoff and sedimentation control devices must be installed prior to and maintained for the duration of works.

Reason: Environmental Protection.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**



20. **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.

21. **Vehicle Crossing**

The provision of one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/5 Extra Low 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.

22. **Trees Condition**

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

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

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

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

Reason: Protection of Trees. (DACLA03)

23. **Excavation Near to Trees on Adjacent Properties**

As excavation is required within five metres of an existing significant tree or trees and vegetation on an adjoining site, the excavation is to be supervised by a qualified consulting arborist. In the event that major structural roots or feeder roots are encountered, the arborist is to require the builder to carry out appropriate action to ensure the retention of the tree or other vegetation, and is to advise the Principal Certifying Authority accordingly. Works are not to progress past this point until the Principal Certifying Authority has confirmed that this condition has been satisfied.

Where the subject trees are on neighbouring property and are on Council's list of exempt species, tree removal remains subject to the owner's consent. Council will not be involved in approving or refusing removal/damage to these trees, and any future decisions made in relation



to them is a civil matter between the neighbouring parties.

**Reason:** To ensure the protection and retention of neighbouring property trees.

24. **Stockpiling of Topsoil**

During site excavation, topsoil which is to be used in later landscape works is to be stockpiled on site and stabilised during construction works. Stockpiles are to be stored outside of hazard areas and not located within the dripline of existing trees which are to be retained.

**Reason:** To ensure protection and retention of the Urban Forest/Natural Environment.

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

25. **Construction in Bush Fire Prone Areas**

The recommendations made in the Bush Fire Assessment Report prepared by Planning for Bushfire Protection, dated 30 November 2017, Report Ref No. 1203 are to be carried out in full to the building.

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

**Reason:** To ensure adequate provision is made for the design and construction of the building to reduce the risk of ignition from a bushfire

26. **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.

27. **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.

28. **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  
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development.

29. **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. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

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)

30. **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 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 NSW Land Registry Services. 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.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

32. **Restoration of Damaged Public Infrastructure**

Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Occupation Certificate application.

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

33. **Documentation of Arborist Site Supervision Required**

Documented evidence of a qualified arborist supervising the works in proximity to trees being retained and ensuring that all tree protection measures as specified in the supplied arborist



report is required. This documentation is to be provided prior to the issue of the Occupation Certificate.

**Reason:** To ensure the retention of the Urban Forest/Natural Environment.

34. **Tree Protection to be Certified by Arborist**

Prior to the commencement of construction works, all tree protection recommendations in particular the establishment of tree protection zone fencing as specified in the approved Arborist Report by NSW Tree Services, dated 10/4/2018 are to be certified by the consulting arborist as being adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites. Certification is to be provided to the certifying body prior to the issue of the Occupation Certificate. Documented evidence of a qualified arborist having supervised the works in proximity to trees being retained and ensuring that all tree protection measures are adopted as specified in the approved arborist report is required. This documentation is to be provided prior to the issue of the Occupation Certificate.

**Reason:** To ensure the retention of the Urban Forest/Natural Environment.

35. **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 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**

36. **Approved Landscape Plan (PLEP)**

Landscaping is to be implemented in accordance with the Landscape Plan authored by Volker Klemm Landscape Design, drawing no. DA 1, Rev B dated March 2018, and any associated condition. The new landscaping is to be approved as completed by the Certifying Authority upon the issue of the Occupation Certificate unless further conditions regarding the completion time frame are imposed.

This landscaping is to then be maintained for the life of the development.

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

37. **Landscape maintenance**

- i) Trees shrubs and groundcovers 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 groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

**Reason:** To maintain local environmental amenity

38. **Retention of Natural Features**

All natural landscape features, including natural rock outcrops, natural vegetation, soil and  
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watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

**Reason:** To ensure the retention of natural features.

39. **Tree Retention**

In accordance with Pittwater 21 DCP Control B4.22 Protection of Trees and Bushland Vegetation, all existing trees as indicated in the **Survey Plan and/or approved Landscape Plan** shall be retained except where Council's prior written consent has been obtained, for trees that stand within the envelope of approved development areas and removal is approved through an arborist report. For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.

**Reason:** To ensure the retention of the Urban Forest/Natural Environment.

40. **Retention of Natural Ground Levels**

The natural ground levels of private open space areas are not to be altered.

**Reason:** To reduce impacts on surrounding vegetation.

41. **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.

42. **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.

43. **Landscape Plan to be Implemented**

Landscaping is to be implemented in accordance with the approved Landscape Plan authored by Volker Klemm Landscape Designer, drawing no. DA 1, Rev B, dated 3/2018. The new landscaping is to be approved as completed by the accredited certifier upon issue of the Occupation Certificate unless further conditions regarding the completion timeframe are imposed. This landscaping is to then be maintained for the life of the development.

**Reason:** To ensure the site is landscaped.





**ITEM 3.2**                                      **DA2018/0628 - 8 BOWER STREET, MANLY - ALTERATIONS  
AND ADDITIONS TO AN EXISTING DWELLING HOUSE  
INCLUDING A SECONDARY DWELLING**

**REPORTING MANAGER**                      **RODNEY PIGGOTT**

**TRIM FILE REF**                                **2018/630733**

**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.

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority grant Development Consent to DA2018/0628 for alterations and additions to an existing dwelling house including a secondary dwelling on land at Lot 34 DP 8075, 8 Bower Street, Manly subject to the conditions outlined in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/0628
<b>Responsible Officer:</b>	Thomas Prosser
<b>Land to be developed (Address):</b>	Lot 34 DP 8075, 8 Bower Street MANLY NSW 2095
<b>Proposed Development:</b>	Alterations and Additions to an existing dwelling house including a secondary dwelling.
<b>Zoning:</b>	Manly LEP2013 - Land zoned E3 Environmental Management
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Development Determination Panel
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Trustees Roman Catholic Church Archdiocese Sydney Gregory Andrew Unsworth
<b>Applicant:</b>	Gregory Andrew Unsworth
<b>Application lodged:</b>	19/04/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New second occupancy
<b>Notified:</b>	23/04/2018 to 09/05/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 2,900,000.00

### 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

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

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity  
 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 - 4.1.4 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 - 5.4.2 Threatened Species and Critical Habitat Lands

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 34 DP 8075 , 8 Bower Street MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of an allotment located on the western side of Bower Street.</p> <p>The site is an irregular shape with a frontage of 16.295m along Bower Street and a depth of 59.02m-. The site has a surveyed area of 68.695m<sup>2</sup>.</p> <p>The site is located within the E3 Environmental Management zone and accommodates a dwelling house on site.</p> <p>The site slopes from Bower Street to the rear, sloping approximately 15 metres from the front of the site to the rear.</p> <p>The site is located is adjacent to area zoned for public recreation and is within an area zoned for as Biodiversity, including threatened species.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by dwelling houses on each side of Bower Street.</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:

- DA238/2008 for demolition of the existing dwelling and construction of a four level dwelling with double garage, swimming pool and landscaping was refused by DAU on 9 December 2008 for the following reasons:

1. The proposed development fails to suitably integrate into the existing streetscape which in turn diminishes the visual amenity of the Foreshore Scenic Protection Area hence the proposal is inconsistent with Clause 17 of the Manly Local Environmental Plan 1988, having regard to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979.
2. The proposed development fails to satisfy the objectives as contained within Clauses 10(b), (d) and (h) of the Manly Local Environmental Plan 1988 having regard to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979.
3. The proposed development fails to satisfy the objectives as contained within Clauses 2.5.1, 3.4.1, 3.5.1 and 3.6.1 of the Manly Development Control Plan for the Residential Zone 2007 – Amendment 1 having regard to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979.
4. The proposed development fails to satisfy the provisions contained within Clauses 2.5.2(a), 3.4.2(a), 3.5.3, 3.5.4, 3.6.2, 3.6.4(a) and 4.3.3 of the Manly Development Control Plan for the Residential Zone 2007 – Amendment 1 having regard to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979.
5. The development will have an adverse impact on the existing and emerging built environment having regard to Section 79C(1)(b) of the Environmental Planning and Assessment Act, 1979.
6. Given the departure to the crown of the road provisions, the breach in the floor space ratio control, the unsatisfactory relationship the development has to the emerging streetscape and that the proposal fails to suitably integrate into the existing surrounding built environment, the site is not suitable for the development as proposed having regard to

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*Section 79C(1)(c) of the Environmental Planning and Assessment Act, 1979.*

*7. The proposal is not in the public interest, having regard to Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979.*

## PROPOSED DEVELOPMENT IN DETAIL

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

### Pool Level

- Proposed bedroom, bar, rumpus area, ensuite, gym, hall, lift and stairs.
- Deck area
- Swimming pool

### Lower Floor Plan

- Three bedrooms with ensuites
- Lounge room
- Media room
- Wine Cabinet
- Communications
- Stairs
- Lift
- Deck area

### Ground Floor Plan

- New lounge
- New Study
- New laundry
- Master bedroom
- Ensuite
- Deck

### Entry Floor Plan

- Alterations and additions to existing ground floor level to provide for new entry, foyer, powder, open plan lounge, dining and kitchen with butler's pantry, timber deck with BBQ area
- Internal access stairs and lift shaft

### External Works

- New concrete driveway and attached double carport with store
- Landscaping

### Secondary Dwelling

- Open plan living
- Bedroom
- Bathroom
- WC
- Laundry

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- Attached deck

Note: The applicant provided comment that agreement was made for a condition to delete the proposed secondary 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:

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
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>Division 8A of the EP&amp;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&amp;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&amp;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&amp;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&amp;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>



Section 4.15 Matters for Consideration'	Comments
	<p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&amp;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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate prepared by Building



Code & Bushfire Hazard Solutions Pty Ltd, dated 23 February 2018 stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

#### **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject 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:

<b>Name:</b>	<b>Address:</b>
Mr Max Chipchase	57 A Gardere Avenue CURL CURL NSW 2096

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

- Non-compliance with FSR and Building height
- Non-compliance with development controls under Manly DCP 2013.
- Proposed dwelling is more substantial than dwelling refused under DA238/2008.
- Adverse amenity impacts caused by bulk and scale.
- Inconsistent with planning principle for views
- Inconsistent with existing and desired character of residential areas

The matters raised within the submissions are addressed as follows:

- Non-compliance with FSR and Building height  
Comment:  
As required by Clause 4.6 of the Manly LEP, the applicant has provided a request to vary the development standards of building height and FSR. Subject to the deletion of the outbuilding to reduce the floor space ratio, the application has adequately addressed the matters required to be demonstrated by subclause (3) as explained in this report.
- Non-compliance with development controls under Manly DCP 2013.  
Comment:  
The non-compliance with numerical controls under the Manly DCP have been assessed in this report in accordance with the underlying objectives of each clause. This assessment has found the proposal to be reasonable.
- Proposed dwelling is more substantial than dwelling refused under DA238/2008.  
Comment:  
The proposed dwelling has been assessed under separate controls and standards. It is also noted that the proposed dwelling better responds to the topography of the land (by stepping down the site) as opposed to the development proposed under the refusal under DA238/2008.
- Adverse amenity impacts caused by bulk and scale  
Comment:  
An assessment of the impacts including under clause 3.4 for Amenity, has found the proposal to



be reasonable.

- Inconsistent with planning principle for views

Comment:  
An assessment of the court established planning principle for views has found the proposal to be reasonable in terms of view impact. This is largely due to the extent of view loss being considered across the whole property and the impacted area being solely over a side boundary (which the planning principle states is an area that is more difficult to protect).
- Inconsistent with existing and desired character of residential areas

Comment:  
The proposal is for alterations and additions to the existing dwelling to provide an upgraded presentation at the frontage. Although this presentation is not consistent with the predominant style on this side of the street, the alterations and additions to an existing element will provide a positive outcome.

## 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 respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>The landscape component of the proposal is acceptable, subject to completion of the proposed landscaping and protection of existing vegetation.</p> <p>Comments: Pool has some concerns whether it meets Australian Standards for pools and non climbable area of 900mm and the opening of the pool to planting area on western boundary of pool.</p> <p>Tree protections would be required for TRZ of trees located on property No 32 Bower Street, which is not addressed in the attached Arborist Assessment report submitted by Peake Arboriculture date 19/02/2018</p> <p>Trees proposed on the planting plan will meet council requirements for additional four trees required planting.</p>

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Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p><b>Updated NECC (Biodiversity) Comments (31 August 2018):</b> This updated assessment is subject to imposition of a condition of consent to delete the proposed outbuilding in the rear yard and retain/replace landscaped area in the proposed outbuilding location, as per Assessing Officer's comment below. Deletion of the proposed outbuilding and retention/replacement of landscaped area will assist in retaining some environmental values on the land and achieve greater compliance with the objectives of Manly LEP 2013 Clause 6.5 (Terrestrial Biodiversity). Conditions of consent are recommended to improve the ecological values of proposed landscaping and maintain some wildlife access to surrounding habitat.</p> <p><b>NECC (Biodiversity) Comments (5 July 2018):</b> Council's Biodiversity Section does not support the proposed development. The proposal has been assessed against the following provisions:</p> <ul style="list-style-type: none"> <li>- NSW <i>Biodiversity Conservation Act 2016</i></li> <li>- Manly DCP 2013 5.4.2 (Threatened Species and Critical Habitat Lands)</li> <li>- Manly LEP Clause 6.5 (Terrestrial biodiversity)</li> </ul> <p>A Flora and Fauna Report (GIS Environmental Consultants, 23 March 2018) has been submitted in support of the DA and includes Tests of Significance (or 'five-part tests') for the endangered population of long-nosed bandicoots at North Head and the grey-headed flying-fox as listed under the <i>Biodiversity Conservation Act 2016</i> (BC Act).</p> <p>The report states that the site currently contains approximately 700m<sup>2</sup> of good quality bandicoot foraging habitat and that the development will result in the removal of 43% of this habitat. A site visit by Council's Natural Environment Officer confirms that the site contains evidence of frequent bandicoot foraging activity in the garden beds and lawn of the front and rear yards, in addition to potential nesting habitat in the form of garden beds. The Flora and Fauna Report provides a number of ameliorative conditions to maintain bandicoot access through and within the site, and states that the removal of 298m<sup>2</sup> of good quality foraging habitat represents a negligible change to the total extent (385ha) of available habitat within the population's distribution. The report concludes that the proposal is therefore unlikely to result in a significant impact to the endangered population.</p> <p>The Flora and Fauna Report also includes a five-part test for impacts on the grey-headed flying-fox associated with the removal of two <i>Ficus rubiginosa</i> trees. The five-part test concludes that the removal of a small amount of potential foraging habitat is unlikely to result in a significant impact to the species.</p>

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Internal Referral Body	Comments
	<p>Council's Biodiversity Section accept the five-part tests' conclusions that the proposal is unlikely to result in a significant impact to the long-nosed bandicoot population and the grey-headed flying-fox.</p> <p>The site is also subject to Clause 6.5 (Terrestrial Biodiversity) of the Manly LEP, which requires the consent authority to consider whether the development is likely to have an adverse impact on the condition; ecological value; flora/fauna significance; vegetation; biodiversity structure, function and composition of the land; or habitat elements providing connectivity on the land. The consent authority must also consider any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p> <p>Soft open space in the rear yard is likely to contribute to habitat connectivity between the Bower Street and Shelly Beach Council Reserves and the North Head National Park and Catholic Church-owned bushland to the east of the site. Furthermore, the rear yard is known and/or likely to be used by a range of native fauna including long-nosed bandicoots, possums, water skinks, cockatoos, lorikeets, noisy miners, water dragons, frogs and brush-turkeys. The proposal will result in a substantial loss of soft open space in this area, with much of the existing deep-soil landscaping to be replaced by rooftop landscaping which will provide minimal wildlife habitat value.</p> <p>The submitted Flora and Fauna Report states that the development has been designed and sited to reduce environmental impact due to "the constraint of the small lot size, the small amount of habitat on the site and the dense urbanization of the area" and that it involves "minimal changes to the existing development footprint". This conclusion is not supported by Council. The development represents a substantial increase in site coverage (from 30% to 66%) and includes several elements which are not ancillary to operation of a primary dwelling (e.g. detached secondary dwelling, pool and pool house, media room, communications area). Given this substantial increase in site coverage and the recognised non-compliance with DCP Clause 4.4 (Floor Space Ratio), it is considered that the applicant has not adequately demonstrated that the proposal has been designed, sited and will be managed to avoid, minimise and mitigate impacts to biodiversity value of the land. It is therefore considered that the proposal is inconsistent with the objectives of Manly LEP Clause 6.5 (Terrestrial Biodiversity).</p> <p><b>Assessing officer comment</b></p> <p>As a result of the non-compliance with Floor Space Ratio along with issues regarding biodiversity (as above), open space and privacy, the proposed secondary dwelling/outbuilding is not supported from a planning perspective. As such a condition has been imposed to delete the secondary dwelling/ outbuilding from the plans prior to the issue of a Construction Certificate.</p> <p>As such, the application was referred back to Council's Biodiversity officer for comment based on this condition being imposed.</p>

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Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>This assessment constitutes the assessment for DA2018/0628 relating specifically to the coastal management requirements.</p> <p>The assessment is based on the review of submitted documentation for DA2018/0628 and the assumption that all documented structures and procedures are applied and recommendations followed.</p> <p>It is recommended that the Development Application be approved with the following conditions:</p>
NECC (Development Engineering)	<p>The propose floor level of the carport is RL 26.25 which is about 720 mm lower than the existing street kerb level.</p> <p>It is too low to install a Council's standard driveway crossing on road reserve.</p> <p>To install an accessible driveway, the carport's floor level needs to be raised at least 400 mm.</p> <p>As such, the carport's floor level shall be RL 26.65.</p> <p>A condition has been place in the consent to address the change.</p> <p>Development Engineer has no objection to the application subject to the conditions of consent.</p> <p><u>Assessing officer comment</u></p> <p>The raising of the carport level in front of the house would maintain a reasonable floor to ceiling height for a car space. Additionally, there would be no unreasonable visual impact or amenity impact that would arise from the raise in floor level.</p>
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of the available documents and site visit, The site of proposed development is not a listed heritage item in its own right, however, it is located in vicinity of heritage items, including the St Patrick's Estate across Bower Street.</p> <p>Given the nature of the proposal and the item, the impact on heritage values is assessed as acceptable.</p> <p>Based on the above, I have no objections to this proposal from heritage perspective.</p> <p><b>Proposal is acceptable without conditions.</b></p> <p>Kind Regards Zoran Popovic  Heritage Adviser</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)\*

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

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

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

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

#### **SEPP 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. A312650 dated 7 April 2018).

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

#### **SEPP (Infrastructure) 2007**

##### Ausgrid

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

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

##### Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory

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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	8.1m-10.25m	20.6%	No, see comments.
Special height provisions	Must not exceed the height of the highest point of the road (RL26.66)	RL29.89	N/A	No, see comments.
Floor Space Ratio Site area: 973m <sup>2</sup>	FSR: 0.45:1 (437.85m <sup>2</sup> )	FSR: 0.567:1 (552.3m <sup>2</sup> ) (with condition to remove studio)  FSR: 0.619:1 (602.3m <sup>2</sup> ) (without condition)	26.1%  37.6%	No, see comments.

#### Compliance Assessment

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

#### Detailed Assessment

#### 4.6 Exceptions to development standards

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### **Height of buildings**

Requirement:	8.5m
Proposed:	10.25m
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	20.6%

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 proposed dwelling is non-compliant with the development standard of 8.5m at the rear section of the upper entry floor level of the house. This entry floor level is an existing storey level of the dwelling and as such, the alterations and additions which are non-compliant with the development standard are to the rear of this storey. As a result, the presentation of the non-complying height element is substantially obscured by the frontage of the existing dwelling and the dwelling will therefore provide a similar presentation of roof form and building height within the streetscape. Additionally, the proposed development steps down the site with the topography so that the majority of the dwelling is 1-2 storeys.

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

#### Comment:

The proposal provides a single storey presentation from the streetscape and steps down the site with the topography to ensure that the bulk and scale of the dwelling is evenly spread so as to minimise amenity impact and provide a reasonable visual presentation. Subject to the condition to delete the outbuilding, the proposal will also be compliant with the controls for open space and landscaped area to ensure that the built form on the property does not provide an overbearing bulk and scale.

*c) to minimise disruption to the following:*

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- (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:

An assessment of the proposal under the Land and Environment Court established views principle in this report along with the assessment under the section for views under the Manly DCP, has found that the proposal will reasonably minimise disruption to loss of views.

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

Comment:

The proposal is compliant with the controls for Sunlight Access and Overshadowing under the Manly DCP and as a result of the orientation of the dwelling, there will be no unreasonable overshadowing to the public space at the rear.

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

Comment:

The subject site is in the zone E3 Environment Management under the Manly LEP 2013. The proposed height and bulk of the development is provided behind and below the frontage of the existing dwelling whilst the dwelling has a compliant setback to the rear to ensure an open space corridor between the dwelling and this public space. The proposed dwelling also steps down with the site to provide a one storey nature for the front and rear section of the dwelling, along with a two to three storey nature for the middle section of the dwelling. Subject to conditions, the landscaped area is also compliant with the control under the Manly DCP to ensure appropriate regard to existing vegetation.

**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 E3 Environmental Management zone.

The underlying objectives of the E3 Environmental Management zone

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

Comment:

The proposal provides a dwelling that minimises visual presentation at the street and provides appropriate landscaping to the rear to ensure protection, management and restoration of the above values.

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

Comment:

*The proposed alterations and additions to the dwelling provide for a development that is consistent and complementary with uses and character of the area.*

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment:

The landscaping to the rear and compliant setback of the dwelling to the public recreation zone ensures that the proposal minimises impact on the natural environment including tree canopies.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment:

The proposal provides a corridor for landscaping at the rear and a compliant rear setback to the rear of the dwelling to ensure the proposal would not negatively impact on the above.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

Subject to conditions, the proposal will be compliant with the control for landscaped area and this will provide an appropriate outcome in this circumstance.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The proposed additions step down with the topography of the site and provides appropriate modulation to have regard to vegetation and surrounding land uses.

**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:

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

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

Comment:

It is appropriate to allow flexibility in this circumstance as the non-compliance of the proposal with the numerical standard for building height would not result in any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

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

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

Comment:

The applicant has provided a request to vary the height of building development standard including the following justification:

*"It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for additions and alterations to an existing dwelling, which are constrained by the siting of the existing building and sloping topography of the site. Council's controls in Clause 4.3 provide a maximum overall height of 8.5m. 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 works have been designed to respect the sloping topography of the site.*
- 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."*

and

*"The development is justified in this instance for the following reasons:*

- Compliance with the height control is constrained by the siting of the existing dwelling and sloping topography of the site.*

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- The proposed development is designed to respect the sloping topography of the site. 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 newer 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 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."

(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 as above. Council is satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

(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 E3 Environmental Management 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 height). However, following advice from the Department of Planning and Environment, single dwellings with a variation of more than 10% for building height may be determined by a delegate of Council. As such, the proposal has been referred to the Development Determination Panel for determination.

**Special height provisions**



Requirement:	RL26.66
Proposed:	RL29.89
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	N/A

The proposal must satisfy the objectives of Clause 4.3A –Special height provisions, 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 Special height provisions limitation pursuant to Clause 4.3A 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 4.3A – 'Special height provisions' of the MLEP 2013 are:

(1) The objective of this clause is to maintain public views to Sydney Harbour from street level on local roads above steeply sloping sites on certain land.

Comment:

The proposal is for alterations and additions to the existing dwelling including changes to the existing front level of the dwelling and the addition of an open carport. The proposal is to be no higher than the ridge level of the existing dwelling and provides an open carport in front of this dwelling. As a result, the alterations won't result in any unreasonable change to views to the harbour from the area.

**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 E3 Environmental Management zone.

The underlying objectives of the E3 Environmental Management zone

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

Comment:

The proposal provides a dwelling that minimises visual presentation at the street and provides appropriate landscaping to the rear to ensure protection, management and restoration of the above values.

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

Comment:  
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The proposed alterations and additions to the dwelling provide for a development that is consistent and complementary with uses and character of the area.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment:

The landscaping to the rear and compliant setback of the dwelling to the public recreation zone ensures that the proposal minimises impact on the natural environment including tree canopies.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment:

The proposal provides a corridor for landscaping at the rear and a compliant rear setback to the rear of the dwelling to ensure the proposal would not negatively impact on the above.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

Subject to conditions, the proposal will be compliant with the control for landscaped area and this will provide an appropriate outcome in this circumstance.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The proposed additions step down with the topography of the site and provides appropriate modulation to have regard to vegetation and surrounding land uses.

**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 lack of unreasonable impact on public views along with the existing development being improved through alterations and additions to refurbish an existing non-complying element (with special height provisions) along with the addition of a carport, provides an appropriate outcome



for the development.

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

Comment:

The proposal will provide for covered car parking to the front of the site along with refurbishment to the front of the dwelling. In this circumstance, flexibility is warranted as this outcome can be achieved without having any unreasonable impact on views from public areas.

(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 request to vary the height of building development standard including the following justification:

*"It is unreasonable and unnecessary to require strict compliance with the development standard as*

*the proposal provides for additions and alterations to an existing dwelling, which are constrained by the siting of the existing building and sloping topography of the site.*

*Council's controls in Clause 4.3A prescribe that a building within the "Special height provisions" area is not to exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot.*

*The proposed works seek to add to and alter the existing dwelling, with the predominant roof form facing the street being retained. The existing ridge level is RL 30.59 and all new works will be at or below this existing level, which will present a height of up to 4.31m above the centre line of the road level, which has been identified as RL 26.28.*

*The majority of the proposed additions to the existing dwelling are predominantly towards the rear of the site and largely screened by the existing ridge line. All new works are at or below the existing ridge level of RL 30.59. As a result, the new works will not result in a significant change to the existing views enjoyed from the public domain.*

*Views from the site are not towards Sydney Harbour, however the panoramic views towards Manly Beach and the ocean are worthy of preserving.*

*It is considered that the proposal achieves the Objectives of Clause 4.3A 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 the existing roof form within the site and the surrounding residential development in the area, together with the character of the locality.*



- The proposed works have been designed to respect the sloping topography of the site.
  - 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."

and,

"Council's controls in Clause 4.3A prescribe that a building within the "Special height provisions " area is not to exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot.

The proposed works seek to add to and alter the existing dwelling, with the predominant roof form facing the street being retained. The existing ridge level is RL 30.59 and all new works will be at or below this existing level, which will present a height of up to 4.31m above the centre line of the road level which has been identified as RL 26.28.

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The development is justified in this instance for the following reasons:

- The proposal is seeking to add to and alter an existing dwelling, with the predominant roof form facing the roadway to be retained.
- Compliance with the height control is constrained by the siting of the existing dwelling and sloping topography of the site.
- The proposed development is designed to respect the sloping topography of the site. 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 newer 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 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 additional view loss from the public domain."

(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 as above. Council is satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

(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.

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Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management 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 and height). 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.

**Floor space ratio**

Numerical

Requirement:	0.45:1 (437.85m <sup>2</sup> )
Proposed:	0.567:1 (552.3m <sup>2</sup> )
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?	
If numerical enter a % variation to requirement	26.1%

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

**Is the planning control in question a development standard?**

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

**What are the underlying objectives of the development standard?**

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

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

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

Comment:

The proposal provides for additional floor space to the rear of the existing dwelling and

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downslope. In this location, the floor space will not be easily visible from the street as a result of the existing front single storey obscuring the area downslope. As a result, the proposed additions to the rear will ensure that the streetscape character will be consistent with the existing and desired character.

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

Comment:

The proposed dwelling steps down with the site and has a compliant rear setback to ensure that appropriate corridors are maintained to allow for outlook and views to landscape and townscape features.

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

Comment:

The proposal maintains the design of the front section of the dwelling and provides floor space to the rear to step down with the slope of the site. This ensures an appropriate visual relationship between the existing development on this side of the street and the proposal. Additionally and subject to conditions, the proposal provides compliant landscaping to the rear to ensure that appropriate visual relationship will be maintained.

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

Comment:

The proposal provides compliance with the numerical controls for Sunlight Access and Overshadowing under the Manly DCP and provides an appropriate design for privacy by providing screening and appropriate window design in locations that have potential unreasonable privacy 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 E3 Environmental Management zone.

#### The underlying objectives of the E3 Environmental Management zone

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

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Comment:

The proposal provides a dwelling that minimises visual presentation at the street and provides appropriate landscaping to the rear to ensure protection, management and restoration of the above values.

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

Comment:

*The proposed alterations and additions to the dwelling provide for a development that is consistent and complementary with uses and character of the area.*

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment:

The landscaping to the rear and compliant setback of the dwelling to the public recreation zone ensures that the proposal minimises impact on the natural environment including tree canopies.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment:

The proposal provides a corridor for landscaping at the rear and a compliant rear setback to the rear of the dwelling to ensure the proposal would not negatively impact on the above.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

Subject to conditions, the proposal will be compliant with the control for landscaped area and this will provide an appropriate outcome in this circumstance.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The proposed additions step down with the topography of the site and provides appropriate modulation to have regard to vegetation and surrounding land uses.

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

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

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

Comment:

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

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

Comment:

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

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

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

Comment:

The applicant has provided a request to vary the height of building development standard including the following justification:

*"It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for the construction of alterations & additions to an existing dwelling including construction of a new detached secondary dwelling, swimming pool, carport and associated landscaping, which is constrained by the extent of the existing development on site. It is considered that the proposal achieves the Objectives of Clause 4.4 and that the development is justified in this instance for the following reasons:*

*-The proposal presents a modest single storey scale to Bower Street due to the sloping topography of the site. The proposed garage is considered to be in keeping with the streetscape appearance of development along Bower Street.*

*-The proposed overall bulk and scale of the new works will maintain amenity and appropriate solar access for the subject site and neighbouring properties.*



*-As demonstrated in the supporting architectural images provided with the application, a significant area of the proposed new floor space is provided below the existing ground levels, which assists in reducing the visual bulk of the proposed new floor space.  
For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard."*

and

*"The proposal seeks to provide a floor space ratio of 596.17m<sup>2</sup> or 0.61:1 which presents a variation to the control of 157.97m<sup>2</sup>.*

*The development is justified in this instance for the following reasons:*

*-The proposed new works will largely maintain the existing bulk and scale of the dwelling as it presents to Bower Street.*

*-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 proposed works do not present any unreasonable impacts for neighbours in terms of view loss, loss of solar access or bulk and scale."*

(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 as above. Council is satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

*(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 E3 Environmental Management 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.

## 6.5 Terrestrial biodiversity

Subject to conditions.

### Manly Development Control Plan

#### Built Form Controls

Built Form Controls - Site Area: 973m <sup>2</sup>	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 8m (based on gradient 1:4+)	9.5m	18.75	No, see comments.
	South: 8m (based on gradient 1:1.4+)	5.9m	N/A	Yes.
4.1.2.2 Number of Storeys	2	3	N/A	No, see comments.
4.1.2.3 Roof Height	Height: 2.5m	1.9m	N/A	Yes.
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m (to carport) 6m (to dwelling)	N/A	No, see comments. Yes.
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 3.17m (based on wall height)	1.4m	N/A	No, see comments.
	South: 1.97m (based on wall height)	1.2m	N/A	No, see comments
	Windows: 3m	1.2-1.4m	N/A	No, see comments.
4.1.4.4 Rear Setbacks	8m	19.6m (pool area)	N/A	Yes.
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8m (rear boundary)	1m	N/A	No, subject to condition outbuilding is to be deleted.
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3 (based on condition to delete outbuilding and convert to landscaped area)	Open space 55% of site area (535.15m <sup>2</sup> )	63.2% (615m <sup>2</sup> )	N/A	Yes.
	Open space above ground 25% of total open space	13.8% (85m <sup>2</sup> )		

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4.1.5.2 Landscaped Area (based on condition to delete outbuilding and convert to landscaped area)	Landscaped area 35% of open space	58.5% (360m <sup>2</sup> )	N/A	Yes.
4.1.5.3 Private Open Space	18m / 12sqm per dwelling	45sqm	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	6.6m	N/A	No, see comments.
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1m	N/A	Yes.
	1m curtilage/1.5m water side/rear setback	1.2m/3.3m/19.6m	N/A	Yes.
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
3.4 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
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 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	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle	No	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
Facilities)		
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

#### Detailed Assessment

### **3.1 Streetscapes and Townscapes**

#### Merit consideration:

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

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

#### Comment:

The proposal includes the addition of a carport to the front of the dwelling which has a front façade to be substantially retained. The carport will be open in nature, appear as an ancillary feature to the dwelling (pitched roof and connected to the dwelling) and integrate landscaping to ensure that there is not a substantial amount of bulk introduced to an area that negative visual impact.

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

#### Comment:

The proposed alterations and additions including the changes to the front of the dwelling and the addition of a carport ensure provide a design that would integrate with the style of the existing dwelling and in doing so complement the streetscape. The existing dwelling does not follow the predominant character of dwellings on this side of the street being located lower than the ridge of the road. As a result, the additions including of the carport which provide a similar pitched roof style to the existing dwelling ensure that the development would complement with the identified streetscape.

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

#### Comment:

In this circumstance, the proposal appropriately integrates landscaping and car parking on the front of the site.



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 provides a design for side elevations including screening and appropriate window form to ensure that there is reasonable minimisation of privacy loss. This includes windows at the south elevation that are all highlight style (above ground level) to ensure that the opportunity for overlooking between properties is adequately reduced. In addition, the larger windows on the north elevation are provided in an appropriate location and have an appropriate orientation to ensure that there would also be no unreasonable overlooking on this side of the 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 screens provided for the deck areas at the rear provide appropriate screening at the side elevations and are limited in extent to be compliant with the control under the Manly DCP 2013 for open space above ground. As these rear decks along with the rear of neighbouring properties are orientated to the west and toward the ocean, these privacy screens can be provided whilst also maintaining access to light, air and views to the west. This provides an appropriate compromise between privacy and other amenity for the subject site and neighbouring properties.

*Objective 3) To encourage awareness of neighbourhood security.*

#### Comment:

The proposal provides windows and entrance areas 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 rear orientation that has access to views toward the ocean. As a result of the ocean being directly to the rear of these dwellings, the proposed development that provides a compliant rear setback and a design to step down with the topography of the land, provides a consistent design for the area to reasonably maintain existing views to the rear whilst also providing views for the new development. This is acceptable 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:

*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 horizon and ocean views that are made partial in some areas by distant vegetation (see Photo 1).



Photo 1: Views from 10 Bower Street

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

Comment:

The views are obtained from directly over a side boundary from outdoor open space area to the front and side of the site at 10 Bower Street. In addition, views are also obtained over the side boundary from lower level living spaces. The views can be obtained from standing and sitting position.

*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:

Given the views over the side boundary and to the rear that are retained for the whole property, the extent of the impact 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:

The development is compliant with the rear setback control and the proposed dwelling steps down with the topography of the site. Along with the negligible impact when views from the whole property are considered, this is a reasonable outcome in terms of view impact.

*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 compliant rear setback and the opportunity for views to the rear being substantially retained, there would be no substantive opportunity for the increase in view creep as a result of the development.

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 proposal is non-compliant with the control for wall height at the northern elevation. The requirement is 8m and the proposed height is 9.5m.

The proposal is also non-compliant with the control for number of storeys. The requirement is for 2 storeys and the proposal is for 3.

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 dwelling is non-compliant with the development standard of 8.5m at the rear section of the upper entry floor level of the house. This entry floor level is an existing storey level of the dwelling and as such, the alterations and additions which are non-compliant with the development standard are to the rear of this storey. As a result, the presentation of the non-complying height element is substantially obscured by the frontage of the existing dwelling and the dwelling will therefore provide a similar presentation of roof form and building height within the streetscape. Additionally, the proposed development steps down the site with the topography so that the majority of the dwelling is 1-2 storeys.

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

Comment:

The proposal provides a single storey presentation from the streetscape and steps down the site with the topography to ensure that the bulk and scale of the dwelling is evenly spread so as to minimise amenity impact and provide a reasonable visual presentation. Subject to the condition to delete the outbuilding, the proposal will also be compliant with the controls for open space and landscaped area to ensure that the built form on the property does not provide an overbearing bulk and scale.

*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:

An assessment of the proposal under the Land and Environment Court established views principle in this report along with the assessment under the section for views under the Manly DCP, has found that the proposal will reasonably minimise disruption to loss of views.

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

Comment:

The proposal is compliant with the controls for Sunlight Access and Overshadowing under the Manly DCP and as a result of the orientation of the dwelling, there will be no unreasonable overshadowing to the public space at the rear.

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

Comment:

The subject site is in the zone E3 Environment Management under the Manly LEP 2013. The proposed height and bulk of the development is provided behind and below the frontage of the existing dwelling whilst the dwelling has a compliant setback to the rear to ensure an open space corridor between the dwelling and this public space. The proposed dwelling also steps down with the site to provide a one storey nature for the front and rear section of the dwelling, along with a two to three storey nature for the middle section of the dwelling. Subject to conditions, the landscaped area is also compliant with the



control under the Manly DCP to ensure appropriate regard to existing vegetation.

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

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

##### Description of non-compliance

The proposal is non-compliant with the front setback to the carport being 0m.

The proposal is non-compliant with the numerical control for side setbacks. The control is 3.17m for the north and the proposed setback is 1.4m. The control is 1.97m at the south and the proposed setback is 1.2m.

The proposal is non-compliant with the control for setbacks to windows. The control is 3m and the proposal is for 1.2m-1.4m.

Subject to a condition, the outbuilding that is non-compliant to with the rear setback control and the control for setback to RE1 zone, is to be deleted.

##### 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 will maintain the existing front presentation of the dwelling. This presentation is unique in the street, however, as the proposal is for alterations and additions to the existing dwelling, the upgraded presentation of this existing element is an appropriate outcome for 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 proposal provided appropriate window design, screening and physical separation to provide an appropriate level of privacy. The proposal is compliant with the requirements for Sunlight and



Overshadowing under the Manly DCP and also provides a large rear setback to the dwelling to ensure appropriate access to light, air and views.

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

Comment:

The location of additional floor space to the rear of the existing front element is an appropriate siting as it is not easily visible from the street and is reasonably separated from neighbouring properties.

*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:

Subject to the deletion of the outbuilding, the proposal will provide a compliant amount of landscaped area and open space to enhance and maintain natural features.

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

Comment:

A bushfire report has been provided and appended as reference documentation as part of this report.

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 numerical control which requires a maximum width of car parking at the frontage to be 50% of the site frontage up to a maximum of 6.2m. The proposed width is 6.6m.

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).*

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Comment:

The alterations and additions to the building would result in providing a parking space on site that can be adequately accessed from the street.

*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 to 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:

Then proposed garage area is integrated into the design of the dwelling along with landscaping surrounding 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 at street level and provides minimal excavation.

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

Comment:

The proposed driveway crossing provides an adequate size access for two cars to the proposed carport, 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 landscaping surrounding the carport. 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 new 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 additions are substantially to the rear and downslope so that the presentation of the new works would not be easily visible from the street.

#### **5.4.2 Threatened Species and Critical Habitat Lands**

Consistent with clause subject to deletion of outbuilding.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

#### **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 DA2018/0628 for Alterations and Additions to an existing dwelling house including a secondary dwelling. on land at Lot 34 DP 8075, 8 Bower Street, MANLY, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA3- Site Analysis Plan	090418	SketchArc
DA4- Pool House Floor Plan	090418	SketchArc
DA5- Pool House Floor Plan	090418	SketchArc
DA6- Lower Floor Plan	090418	SketchArc
DA7- Ground Floor Plan	090418	SketchArc
DA8-Entry Floor Plan	090418	SketchArc
DA9- Roof Plan	090418	SketchArc
DA10- North Elevation	090418	SketchArc
DA11- South Elevation	090418	SketchArc
DA12- Street East Elevation & East Elevation	090418	SketchArc
DA13- West Elevation	090418	SketchArc
DA14- Section A-A	090418	SketchArc
DA15- Section B-B	090418	SketchArc
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DA16- Section C-C	090418	SketchArc
DA17- Section D-D	090418	SketchArc
DA18- Section E-E	090418	SketchArc
DA19- Section F-F	090418	SketchArc
DA20- Section G-G	090418	SketchArc
DA21- North Elevation & South Elevation & West2 Elevation & East2 Elevation & Section H-H & Section J-J	090418	SketchArc

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Geotechnical Investigation	10 April 2018	White Geotechnical group

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Bushfire Hazard Assessment Report	23 February 2018	Building Code & Bushfire Hazard Solutions
Peake Arboiculture	19/02/2018	Peake Arboriculture
Terrestrial Biodiversity Report	March 2018	GIS Environmental Consultants

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:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Site Plans and Open Space Calculations	18/01/18	Serene Landscapes

<b>Waste Management Plan</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	25 October 2018	Vaughan Milligan

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:

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- (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](http://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 Disposal Compliance

Certification of Drainage plans detailing the provision of On-site Stormwater Disposal in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE



STORMWATER MANAGEMENT 2003 and the concept drawing by NB Consulting Engineers, Job number 171256 dated 29/03/2018. 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. **The Floor Level of Carport**

The floor level of the proposed carport shall be at least RL 26.65. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure suitable vehicular access to private property

10. **Waste Management Plan**

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

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

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

11. **Water Proofing and Drainage Details.**  
(2LD01)

Details must be submitted to the Certifying Authority prior to issue of the Construction Certificate indicating the proposed method of water proofing and drainage of the concrete slabs over which landscaping is being provided.

Reason: To ensure the appropriate type of water proofing is carried out and descriptive information about drainage is provided and drainage is adequately control .

12. **Pool Exclusion Fencing – Bandicoot Habitat**

Long-nosed Bandicoots are to be excluded from swimming pools and spas while maintaining access to any surrounding soft landscaping. Pool fencing must have no gaps large enough to allow bandicoots access.

Plans are to be amended and provided to the Certifying Authority prior to the issue of the Construction Certificate.

**Reason:** To prevent Long-nosed Bandicoots from drowning in swimming pools and spas.



**13. Height of Walls/Steps – Bandicoot Habitat**

The height of any new retaining walls or steps of new external stairways must not exceed 200mm (or lower in accordance with BCA standards). Where this cannot be achieved, a slope is to be provided in association with the retaining walls and/or stairs to permit Long-nosed Bandicoot access.

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

**Reason:** To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

**14. 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 protect the environment from the effects of sedimentation and erosion from development sites.

**15. No Bright Lighting – Bandicoot Habitat**

No bright lighting or motion detectors are to be installed to illuminate the lawn or garden areas. A modest amount of low lighting may be used for safety purposes only.

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

**Reason:** Bright lighting disturbs Long-nosed Bandicoots and disrupts normal Bandicoot foraging, sheltering and nesting activity.

**16. Access to Undercroft Areas – Bandicoot Habitat**

Where concealing material is required for any undercroft areas (e.g. under the house, stairs or balcony), gaps are to be established to allow Long-nosed Bandicoot access. Gaps are to be at least 150mm high and 300mm wide.

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

**Reason:** To maintain bandicoot access to existing and proposed habitat within and surrounding



the site.

**17. Preparation of CEMP – Manly LEP Clause 6.5**

A Construction Environmental Management Plan (CEMP) is to be prepared outlining all measures for the protection of native fauna and vegetation during the construction phase. Measures to be addressed in the CEMP include, but are not limited to, all conditions of this consent addressing construction-related biodiversity impacts.

The CEMP is to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

**Reason:** To ensure conditions for the prevention of construction-related biodiversity impacts are complied with during the construction phase.

**18. Stormwater Management**

Water quality is not to be reduced from pre-development conditions. The stormwater management plan is to be updated to demonstrate that there is no increase in stormwater pollutant loads arising from the approved development. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to issue of the Construction Certificate.

**Reason:** To ensure that the generation of additional stormwater discharge from the site due to the increase in impervious area does not adversely impact the marine ecosystem within the Cabbage Tree Bay Aquatic Reserve

**19. Provision of Landscape Working Drawings**

The submitted plans are to be amended in accordance with the following:

- a) Deletion of the proposed outbuilding and associated services and structures;
- b) The footprint of the deleted outbuilding replaced with soft open space incorporating turf and/or garden beds will low clumping species consistent with Section 3.3.1.a)iv) of the Manly DCP 2013;
- c) Planting schedule amended accordingly and identifying the stratum, species/common names, species quantities, pot sizes and staking details of proposed plantings;
- d) The proposed finished treatment of garden areas, including soil depth and retaining walls and the location of underground services.

**Reason:** To achieve greater consistency with the objectives of Manly LEP Clause 6.5 (Terrestrial Biodiversity)

**20. Access Spaces – Bandicoot Habitat**

Any new gates or fences are to be designed to include gaps appropriate to maintain bandicoot access through and within the site. Gaps are to be at least 150mm high and 300mm wide. This condition does not apply to pool fencing.

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

**Reason:** To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

**21. Deletion of outbuilding**

The proposed outbuilding is to be deleted from the consent and replaced with landscaped area



and native species of vegetation. Details are to be provided prior to the issue of a Construction Certificate.

Reason: To ensure consistency with the objectives of the zone, objectives of open space under the Manly DCP, objectives for Landscape design under the Manly DCP and to provide an acceptable floor space ratio variation. (DACPLCPCC1)

#### CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

##### 22. **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 {SELECT ONE DEPENDING ON PROJECT SIZE \$10 million \$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 Warringah 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.

##### 23. **Tree Protection Measures** (4LD04)

The following precautions must be taken when working near trees to be retained, inclusive of tree within adjoining properties:

- harmful or bulk materials or spoil must not be stored under or near trees,
- prevent damage to bark and root system,
- mechanical methods must not be used to excavate within root zones,
- topsoil from under the drip line must not be added and or removed,
- ground under the drip line must not be compacted, and
- trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible damage.

##### 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

##### 25. **Site Induction Required**

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of relevant threatened species and endangered ecological communities through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by

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every worker and the site manager.

Evidence of the site induction is to be documented and provided to the Principal Certifying Authority.

**Reason:** To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

26. **Fauna Protection Fencing**

Temporary chain wire fencing is to be installed around all work areas (including demolition, storage and construction areas) prior to the commencement of works. The fencing is to be designed to minimise the possibility of ground-dwelling native fauna (including relevant threatened species) accessing the work areas. Fencing is to be maintained for the duration of works.

**Reason:** To prevent impacts to ground-dwelling native fauna, including relevant threatened species.

27. **Ecologist to Induct Site Manager**

Prior to commencement of construction works, the project ecologist is to meet with the site manager to:

- a) advise of conditions to be implemented for protection of relevant threatened species and endangered ecological communities;
- b) ensure that all workers are appropriately briefed on required protective measures; and
- c) inspect protective measures to confirm their adequacy and advise the proponent and site manager of the inspection results and their implications.

**Reason:** To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

28. **Stormwater Connection**

Where connection to Council's nearest stormwater drainage system is required, the applicant shall connect the pipeline in accordance with Council's specification for engineering works and shall reconstruct all affected kerb and gutter, bitumen reinstatements, adjust all vehicular crossings for paths, grass verges and household stormwater connections to suit the kerb and gutter levels. All works shall be undertaken at the applicant's cost, and upon completion certified by an appropriately qualified and practicing Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

**Reason:** To ensure compliance of drainage works with Council's specification for engineering works.

29. **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. 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

30. **Vehicle Crossings**

The provision of a vehicle crossing 4 metres wide at kerb and 5 metres wide at boundary in accordance with Northern Beaches Council Drawing No A4-3330/5 EL 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

31. **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.

32. **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

33. **Waste Management During Development**

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

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

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

34. **Construction Hours – Manly LEP Clause 6.5**

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 7:00am and 5:00pm.

**Reason:** Noise and vibration can disturb local native fauna (including threatened species) and prevent access to their natural habitats.

35. **Pre-clearance Survey Required – Bandicoot Habitat**

A pre-clearance survey for Long-nosed Bandicoot activity and presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no Long-nosed Bandicoots are present within the area to be cleared. All clearing must initially be carried out with hand tools to identify whether any bandicoots are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter). Machinery may only be used once it has been confirmed that no bandicoots are sheltering within the area to be cleared. Clearing must be carried out at dusk and completed within one day so that bandicoots do not reoccupy partially cleared areas overnight. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to the Principal Certifying Authority.



**Reason:** To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

**36. Daily Inspections Required – Bandicoot Habitat**

An inspection register log-book must be kept on site recording daily inspections of all holes, machinery and construction material stockpiles, checking for Long-nosed Bandicoots. Inspections are to be undertaken each work day prior to commencement of works and works may only proceed once any bandicoot has safely vacated any holes, machinery or stockpiles. The log-book is to be made available to Principal Certifying Authority.

**Reason:** To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

**37. Pollution Control**

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

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

**38. CEMP to be Implemented – Manly LEP Clause 6.5**

Construction is to be undertaken in accordance with the Construction Environmental Management Plan (CEMP). All workers are to be made aware of the content of the CEMP.

**Reason:** To ensure conditions for the prevention of construction-related biodiversity impacts are complied with during the construction phase.

**39. Report Dead or Injured Bandicoots – Bandicoot Habitat**

Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

**Reason:** To prevent impacts to Long-nosed Bandicoots in accordance with the Biodiversity Conservation Act 2016.

**40. Pollution Control**

Any liquid waste/materials such as paint, lacquers, and any excess water from cleaning tools, paintbrushes, and machinery must not enter the stormwater drainage network and/or receiving waterways.

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

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

**41. 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

42. **Landscape Completion**  
(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 L-01 and set 1-10 submitted by Serenescapes: dated 18/1/18

Additionally the drainage for the fire pit located at rear western boundary shall wholly on site. No fire pit drainage shall be dispersed upon public reserve.

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

43. **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. The site has an area of 973.77m<sup>2</sup> and such requires four trees.

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

44. **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 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**

45. **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.

46. **Maintain Fauna Access and Landscaping Provisions – Manly LEP Clause 6.5**

All fauna access/movement and landscaping provisions specified in these conditions of consent are to be implemented and maintained for the life of the development.

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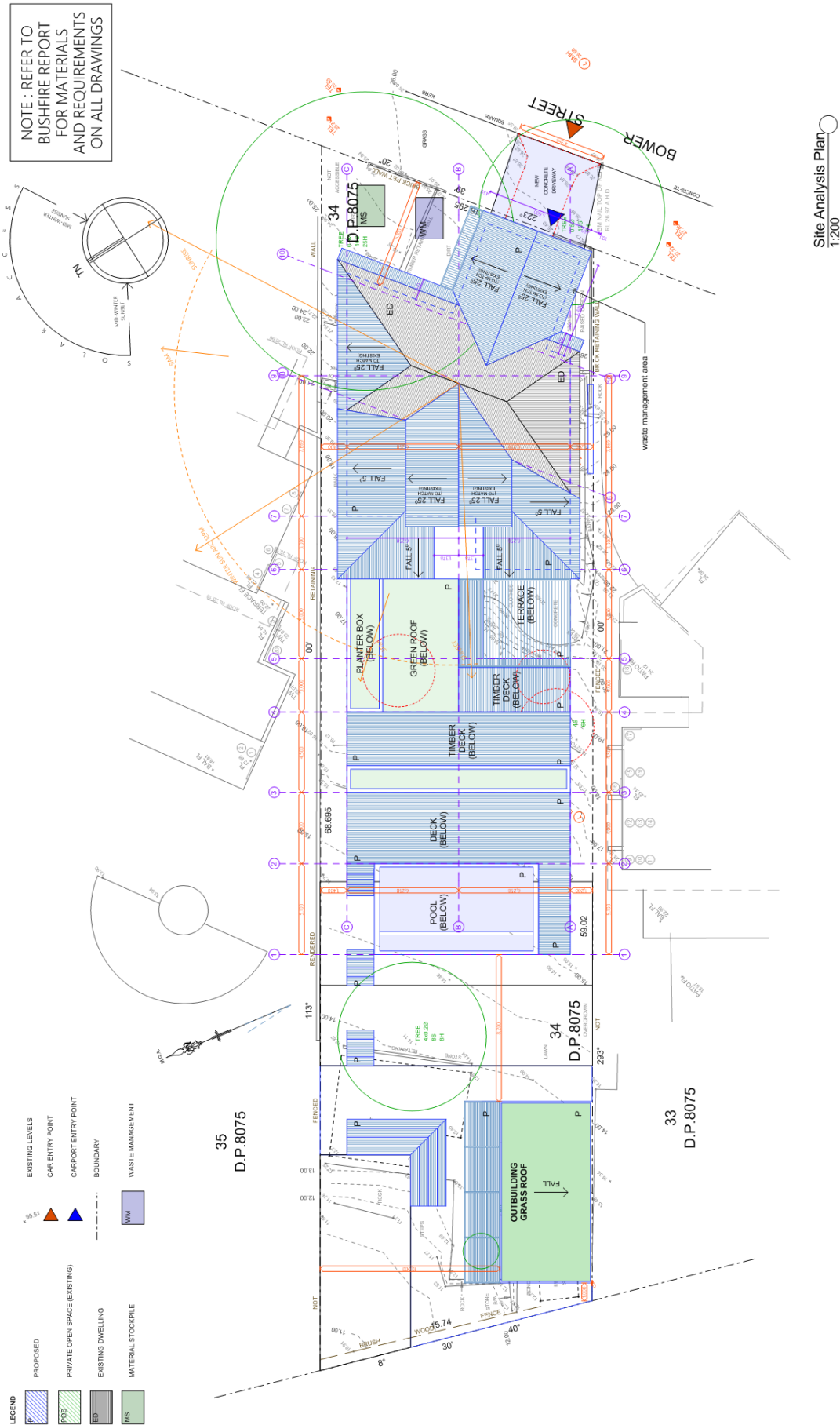


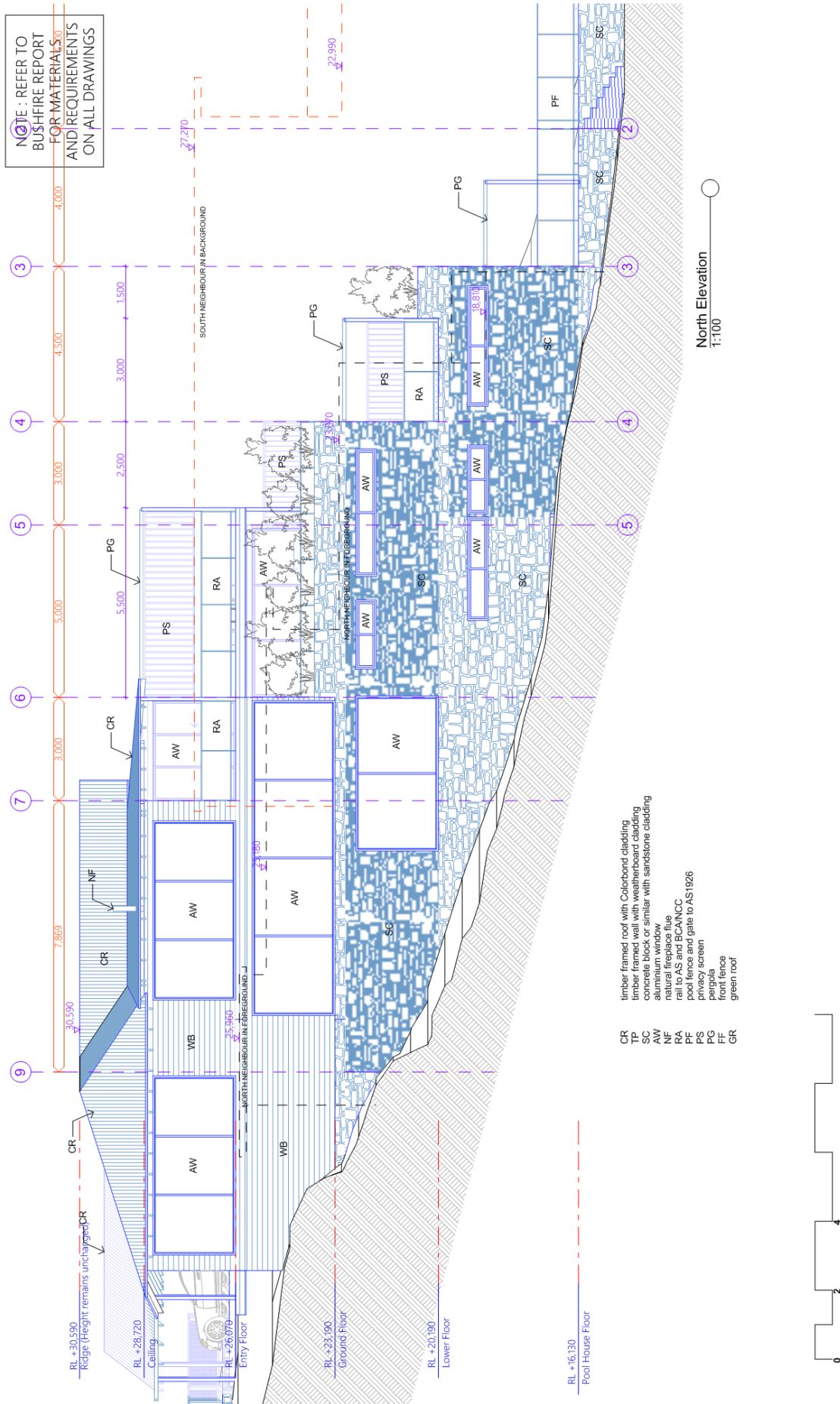
**Reason:** To maintain fauna access to existing and proposed habitat within and surrounding the site.

47. **Dead or Injured Wildlife – Manly LEP Clause 6.5**

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.

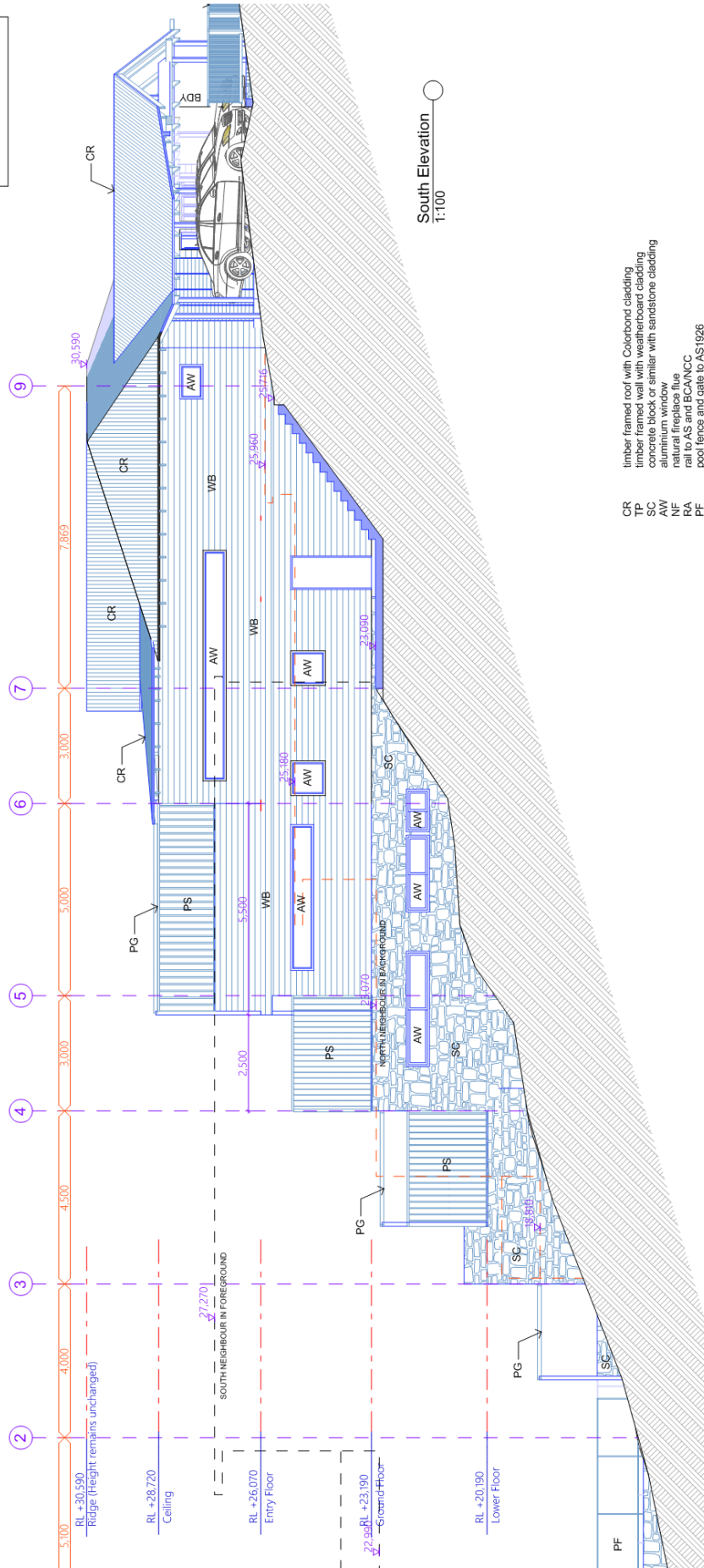
**Reason:** To mitigate potential impacts to native wildlife resulting from construction activity.





<p><b>DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE.</b>  <b>FIGURED DIMENSIONS TAKE PRECEDENCE.</b>          The builder shall check and verify all dimensions and areas and compare to the architect's drawings for the purpose of construction. Drawings shall not be used for construction purposes until issued by the architect for construction.</p>		REV	DATE	DESCRIPTION
<p><b>PROJECT:</b> 8 Bower St, Manly, 2095, NSW          Alterations &amp; Additions / Secondary Dwelling          LOT 34 in DP 8075 - 973m<sup>2</sup></p> <p><b>CLIENT:</b> Private</p>				
<p><b>STATUS:</b> Design DA  <b>DATE:</b> 090418  <b>STAGE:</b> Design DA  <b>DRAWING NO:</b> DA10</p>				
<p><b>SCALE:</b> 1:100@A3  <b>DRAWN/DESIGNED:</b> PB / MP  <b>PROJECT NUMBER:</b> 1617  <b>ISSUE:</b> #Keywords</p>				
<p><b>Legend:</b>  <span style="color: blue;">■</span> = Proposed Work  <span style="color: red;">■</span> = Demolition  <span style="color: black;">■</span> = Existing</p>				

NOTE : REFER TO  
BUSHFIRE REPORT  
FOR MATERIALS  
AND REQUIREMENTS  
ON ALL DRAWINGS



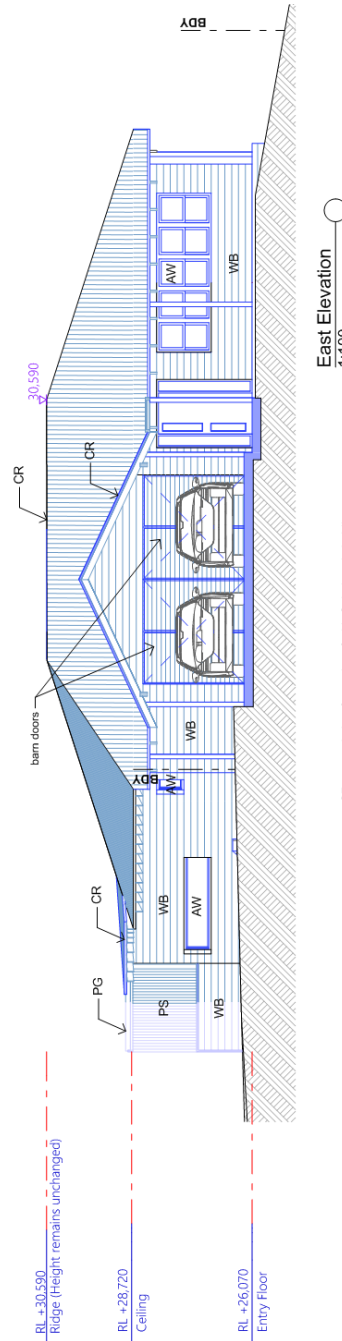
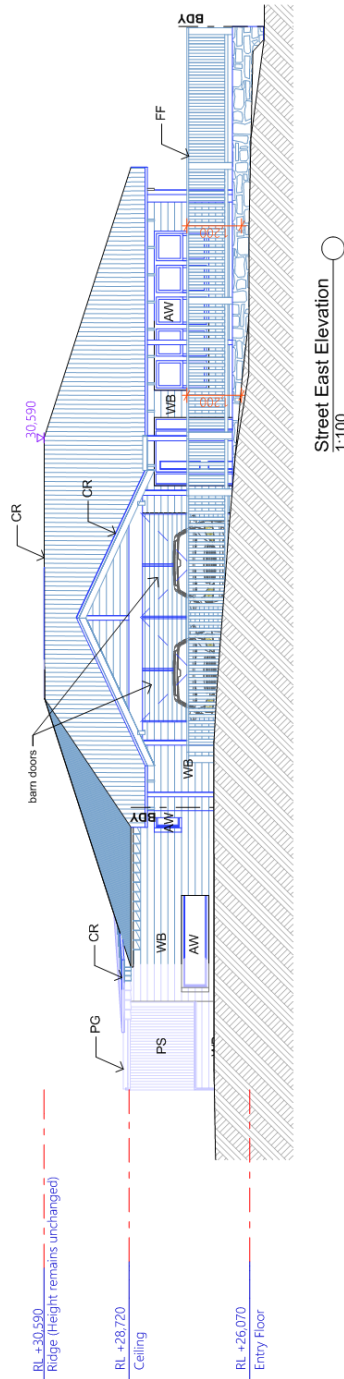
South Elevation  
1:100

- CR timber framed roof with Colorbond cladding
- TP timber framed wall with weatherboard cladding
- SC concrete block or similar with sandstone cladding
- AW aluminum window
- NF natural stone cladding
- RA rural to AS and BCA/NCC
- PF pool fence and gate to AS1926
- PS privacy screen
- PG pergola
- FF front fence
- GR green roof



<p><b>DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE. FIGURED DIMENSIONS TAKE PRECEDENCE.</b> The builder shall check and verify all dimensions as shown on the drawings and make any necessary adjustments to the drawings. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the ARCHITECT FOR CONSTRUCTION.</p>			<p><b>sketchArc</b> Po Box 377 Manly 1655 m : 0422 521 871 e : power@sketcharc.com.au w : www.sketcharc.com.au</p>		<p><b>PROJECT:</b> 8 Bower St, Manly, 2095, NSW Alterations &amp; Additions / Secondary Dwelling LOT 34 in DP 8075 - 973m2</p>		<p><b>CLIENT:</b> Private</p>		<p><b>STATUS:</b> Design DA</p>		<p><b>DATE:</b> 090418</p>		<p><b>SCALE:</b> 1:100@A3</p>		<p><b>PROJECT NUMBER:</b> 1617</p>		<p><b>ISSUE:</b> #Keywords</p>		<p><b>STAGE:</b> Design DA</p>		<p><b>DRAWING NO.:</b> DA11</p>		<p><b>KEY:</b> = Proposed Work = Demolition = Existing</p>	
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NOTE : REFER TO  
BUSHFIRE REPORT  
FOR MATERIALS  
AND REQUIREMENTS  
ON ALL DRAWINGS



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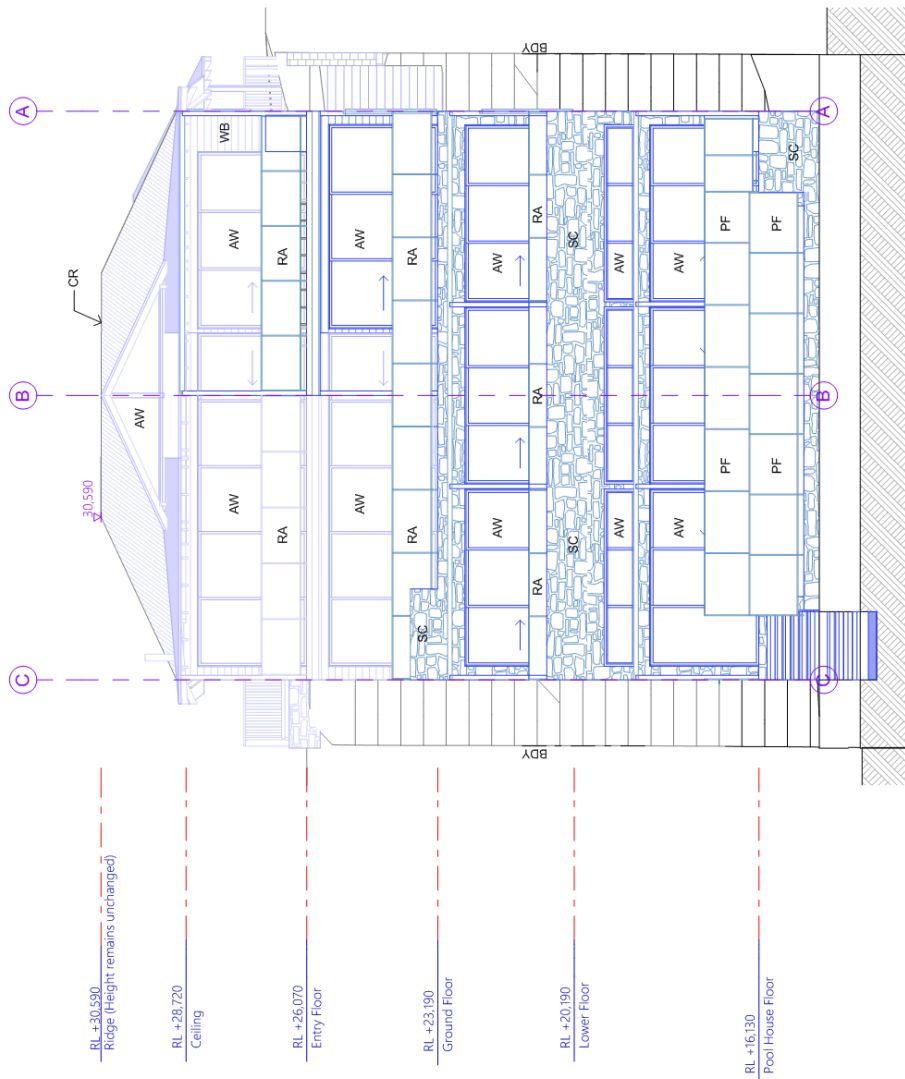
timber framed roof with Colorbond cladding  
timber framed wall with weatherboard cladding  
concrete block or similar with sandstone cladding  
aluminium window  
natural fireplace flue  
rail to AS and BCANCC  
privacy screen  
people  
front fence  
green roof

0 2 4

<div>DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE.</div> <div>FIGURED DIMENSIONS TAKE PRECEDENCE.</div> <div>The builder shall check and verify all dimensions and verify all errors and omissions to the drawings and ensure that they are correct.</div> <div>Drawings shall not be used for construction purposes until issued by the ARCHITECT for construction.</div>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																															
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NOTE : REFER TO  
BUSHFIRE REPORT  
FOR MATERIALS  
AND REQUIREMENTS  
ON ALL DRAWINGS

CR timber framed roof with Colorbond cladding  
TP timber framed wall with weatherboard cladding  
SC concrete block or similar with sandstone cladding  
AW aluminium window  
NF natural fireplace flue  
RA rail to AS and BCANCC  
PF pool fence and gate to AS1926  
PS privacy screen  
PG pergola  
FF front fence  
GR green roof



West Elevation  
1:100

DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE. FIGURED DIMENSIONS TAKE PRECEDENCE. The builder shall check and verify all dimensions as shown on the drawings and as indicated on the site. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the ARCHITECT FOR CONSTRUCTION.			sketchArc Po Box 377 Manly 1655 m : 0422 521 871 e : power@sketcharc.com.au w : www.sketcharc.com.au			PROJECT: 8 Bower St, Manly, 2095, NSW Alterations & Additions / Secondary Dwelling LOT 34 in DP 8075 - 973m2			CLIENT: Private			STATUS: Design DA			DATE: 090418			SCALE: 1:100@A3			PROJECT NUMBER: 1617		
												= Proposed Work = Demolition = Existing			STAGE: Design DA			DRAWN/DESIGNED: PB / MP			ISSUE: #Keywords		
REV			DATE			DESCRIPTION																	

<b>ITEM 3.3</b>	<b>DA2018/1187 - 4 PACIFIC PARADE, MANLY - ALTERATIONS AND ADDITIONS TO AN EXISTING SEMI-DETACHED DWELLING INCLUDING A SWIMMING POOL</b>
<b>REPORTING MANAGER</b>	<b>RODNEY PIGGOTT</b>
<b>TRIM FILE REF</b>	<b>2018/631962</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report</b> <b>2 Site Plan and Elevations</b>

### **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.

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### **RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority grant Development Consent to DA2018/1187 for alterations and additions to an existing semi-detached dwelling including a swimming pool on land at Lot 1 DP 511797, 4 Pacific Parade, Manly subject to the conditions outlined in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/1187
<b>Responsible Officer:</b>	Adam Croft
<b>Land to be developed (Address):</b>	Lot 1 DP 511797, 4 Pacific Parade MANLY NSW 2095
<b>Proposed Development:</b>	Alterations and additions to an existing semi-detached dwelling including a swimming pool
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Russell Craig Barry Kate Gwen O'Ryan-Roeder
<b>Applicant:</b>	Thodey Design
<b>Application lodged:</b>	11/07/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	17/07/2018 to 02/08/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 723,056.33

### ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;



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

#### **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Local Environmental Plan 2013 - 6.2 Earthworks  
 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 - 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**

<b>Property Description:</b>	Lot 1 DP 511797 , 4 Pacific Parade MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the northern side of Pacific Parade.</p> <p>The site is regular in shape with a frontage of 6.06m along Wanganella Street and a depth of 36.575m. The site has a surveyed area of 223.2m<sup>2</sup>.</p> <p>The site is located within the R1 General Residential zone and accommodates a semi-detached dwelling.</p> <p>The site is generally flat.</p> <p>The site includes minimal landscaped area and two trees in the rear yard.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by detached and semi-detached dwelling and dual occupancies.</p>

Map:



#### **SITE HISTORY**

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

#### **PROPOSED DEVELOPMENT IN DETAIL**

The proposal includes alterations and additions to the existing dwelling resulting in:

Ground Floor:

- Kitchen, rear living and dining room
- Living room
- Two bedrooms

First Floor:

- Master bedroom with ensuite and walk in robe
- Bedroom
- Bathroom
- Study area

External:

- Rear pergola and outdoor kitchen
- Swimming pool
- Demolition of existing shed and covered BBQ
- Changes to rear decking
- New storage under front deck

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

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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

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

#### MEDIATION

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



## REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

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

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

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

Nil

### Manly Local Environmental Plan 2013

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

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.4m	N/A	Yes
Floor Space Ratio	0.6:1 133.92m <sup>2</sup>	0.67:1 150.4m <sup>2</sup>	12.3%	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
6.2 Earthworks	Yes

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Clause	Compliance with Requirements
6.4 Stormwater management	Yes
6.12 Essential services	Yes

#### Detailed Assessment

#### **4.6 Exceptions to development standards**

The following assessment of the variation to the 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:	0.6:1 (133.92m2)
Proposed:	0.67:1 (150.4m2)
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	12.3%

The proposal must satisfy the objectives of 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 compliant with the height of buildings development standard under the Manly LEP, in addition to compliant wall height, number of storeys and roof height. The proposal is similar in scale to surrounding developments and the proposed first floor addition is located behind the existing ridge in order to maintain the single-storey facade. The existing rear building line is maintained and the proposed roof form also minimises the bulk of the dwelling. As the additions are located behind the existing roof and are reasonable in terms of bulk and scale, the proposal will remain consistent with the streetscape.



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

Comment:

The proposed first floor addition is a compliant height and is contained within the existing building footprint. As such, the proposed building bulk is not excessive and will not obscure any important landscape or townscape features.

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

Comment:

Despite the proposed FSR and setback non-compliances, the proposal remains generally consistent with the surrounding development and is set back behind the existing dwelling roof. The existing narrow allotment and setbacks will further obscure the proposed works from the streetscape and wider public domain. As such, the proposed development will maintain an appropriate visual relationship with the existing character and landscape of the area.

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

Comment:

The proposed development will result in no unreasonable impact on the use or enjoyment of adjoining land. A full assessment of amenity impacts is completed under Part 3 General Principles of Development.

*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 R1 Low Density Residential zone:

- *To provide for the housing needs of the community.*

Comment:

The proposal retains the existing residential use.



It is considered that the development satisfies this objective.

- *To provide for a variety of housing types and densities.*

Comment:

The proposal will retain the existing housing type and density.

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 the development satisfies this objective.

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

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

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

Comment:

The proposed development, as assessed, will result in no unreasonable amenity impacts on the adjoining properties or visual impact on the streetscape. As such, it is relevant in this case to provide an appropriate degree of flexibility in applying the floor space ratio development standard.

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

Comment:

Allowing flexibility in this circumstance will achieve a better outcome through the provision of greater GFA and variety in dwelling sizes, while maintaining the amenity of the surrounding area.

(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*

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

Comment:

The applicant has provided the following justification in relation to subclause (3):

*"Part 1: Demonstrates why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

*a) The proposal's increase in bulk takes into consideration the contribution of the existing building and enhances the character of the area by maintaining and not altering the principal street frontage of Pacific Parade. The change in bulk only occurs at the rear where this is already a rear L1 bedroom. The adjoining property (6 Pacific Parade) also has a rear Level 1 structure. The increase in bulk towards the rear is a typology that is seen in many houses along Pacific Parade; in submissions that have been recently approved but that are also undergoing the approval process currently. The bulk in this case is also limited to the existing rear building line so as to provide minimal disruption. An example of recently approved rear L1 structures can be seen in the following properties:*

- 50 Pacific Parade- FSR Allowed: 0.606:1 (Approval Date 20/2/17)*
- 48 Pacific Parade- FSR Allowed: 0.79:1 (Approval Date 24/4/13)*
- 36 Pacific Parade- FSR Allowed: 0.77:1 (Approval Date 24/5/17)*
- 3 Pacific Parade- FSR Allowed: 0.64:1 (Approval Date 21/4/17)*

*b) Our proposal will not disrupt the amenity or privacy of any neighbours. The windows provided to the ground and first floor look over the rear of the property. All windows to Level 1 are accompanied by awnings for additional privacy but also as a BASIX requirement. New windows to side elevation on Ground Floor emulate what is existing and new windows to L1 side elevation are either opaque glazing or have privacy film up to a sill height of 1600mm FFL (in addition to awnings); hence demonstrating that privacy and amenity to all surrounding neighbours has been considered.*

*c) There will be no adverse overshadowing to any neighbours as the new structure is similar to bulk and scale to what is existing. All properties adjacent also enjoy a two storey rear typology and the additional shadows are minimal in comparison to the shadows currently present. Refer to Shadow Diagrams prepared by Thodey Design. Due to the rear building line remaining the same, the extra shadows have been significantly limited.*

*d) The scale of the proposal is modest, and we believe it is impossible to maintain the FSR for a contemporary home for a growing family. The additional space occurs in the need to provide adequate living areas and additional bedrooms for a growing family. The Level 1 addition features a*

*large void for the sake of airflow and ventilation and is essential to allow light to enter the property where it currently does not now. All neighbouring properties have been consulted prior to the lodgement of this DA and all are supportive of the proposal. As can be seen by the two storey bulk*

*and typology within Pacific Parade; we believe that we are not proposing a design that is unreasonable or unlike the same demands of those properties within the same street. The additional space in the proposal is needed to maximise the utility of the existing building for a growing family*

*and provide ample living areas for the demands of a growing family.*

*e) The additional bulk to the rear does not interfere with the principal street façade. We have chosen to highlight and maintain the cottage design typology and character of the building by not altering the principal façade to Pacific Parade in order to respect the typology of the building and also those that it replicates along the street. The new addition is not visible from the street in its majority; and the roof form and external wall that is slightly visible from the street; matches the*



current roof pitch and replicates the materials and character of the existing dwelling. The design palette is neutral; with new neutral coloured weather board cladding proposed to the existing and new weatherboard cladding. The new pitched roof follows the same pitch as the current existing pitch; but is a skillion form to highlight a modern approach and therefore create a clear juxtaposition of old and new. We believe we have created a design that is both functional and respectful of it's current locale.

f) The development as a whole retains council's DCP controls for setbacks. g) The development as a whole provides ample private open space, landscaped area and is under the allowable open space above ground requirements. It does not comply with total open space but only because this is an existing contravention to the standard required and is the only DCP requirement that has not been able to be met.

h) The height of the proposal is well below the restricted 8.5M (proposed at 7.29M at highest point). - The rear building line only extends from the current building line (where there is currently a two storey typology) by 900mm. The additional space is necessary for the void to L1 to bring in natural light and ventilation and allowing more clever and passive design to be implemented. The house currently does not enjoy ample natural light or useable living areas. The direct neighbour has a rear living area that currently sits lower than the proposed rear ground floor of the subject site and therefore has access to ample living area.

i) Many properties in the street (refer to point (a) above) have requested and been granted above and beyond the stipulated maximum FSR. We ask that this proposal be read in the same manner and understanding; showing that the need for increased FSR is unavoidable when wanting to create an amenable and functional home for a growing family. As can be seen throughout the street in these determinations; our proposal is no different and we ask that it should be considered within the same merits as these that have been determined.

Part 2: Demonstrates that there are sufficient environmental grounds to justify contravening the development standard.

- The increase in FSR, as demonstrated in part 1, will have no environmental effects on the principal Street streetscape. There will be minimal environmental effect to either neighbour in regards to views, privacy and overshadowing. There are therefore sufficient grounds to justify contravening the development standard of Floor Space Ratio. All other standards have been met and the proposal mimics the double storey typology in the street and is reasonable. Its reasonable request can be supported in that there are many other proposals in the street that have also asked for similar or more generous FSRs and their determinations have been assessed and granted. The direct neighbour has a rear living area that currently sits lower than the proposed rear ground floor of the subject site and therefore has access to ample living area. In regard to sloping of the street in this direction; it is not unreasonable for this proposal to sit prouder of this direct neighbour."

(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 is considered to adequately address the matters required to be demonstrated by subclause (3). Council is satisfied that compliance with the control is unreasonable and unnecessary and the objectives of the control and zone are achieved.



*(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 R1 General 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.

## 6.2 Earthworks

The proposed excavation is limited to the swimming pool.

### Manly Development Control Plan

#### Built Form Controls

Built Form Controls - Site Area: 223.2m <sup>2</sup>	Requirement	Proposed	Complies
4.1.2.1 Wall Height	Eastern: 6.5m	5.8m - 6.2m	Yes
4.1.2.2 Number of Storeys	2	2	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.1m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	4.66m	Existing
4.1.4.2 Side Setbacks and Secondary Street Frontages	Eastern: 1.9m - 2.1m	1.1m	No
4.1.4.4 Rear Setbacks	8m	8.051m	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area 122.76m <sup>2</sup>	33.8% 75.5m <sup>2</sup>	Existing
4.1.5.2 Landscaped Area	Landscaped area 35% of open space 24.7m <sup>2</sup>	52.3% 39.5m <sup>2</sup>	Yes
4.1.5.3 Private Open Space	18m <sup>2</sup> per dwelling	> 18m <sup>2</sup>	Yes

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4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m 3.03m	2.8m	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.75m	Yes
	1m curtilage	0m	No
	1.5m water side/rear setback	1m - 1.13m	No
Schedule 3 Parking and Access	Dwelling 2 spaces	1 space	Existing

**\*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)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

#### Detailed Assessment

##### 3.3.1 Landscaping Design

Sufficient landscaped area is proposed on the site in the context of the surrounding area.

##### 3.3.2 Preservation of Trees or Bushland Vegetation

No tree or vegetation removal is included in the proposal.

##### 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:

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

Comment:

Taking into account the predominant built form and setbacks of the surrounding area, the proposed does not cause unreasonable overshadowing of adjoining properties. At 9am there is additional overshadowing of the adjoining semi-detached dwelling at No. 6 Pacific Parade. At 12pm there is minor additional overshadowing of the existing ground floor roof of the subject dwelling. At 3pm there is significant overshadowing of the ground floor windows and outdoor areas of the adjoining property No. 2 Pacific Parade.

*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 windows and private open spaces of the subject site and adjoining properties.

*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 appropriately designed with a low building height and modulated roof form to minimise the bulk of the dwelling. As such, the bulk of the dwelling and resultant overshadowing have been minimised despite the existing built forms found in the surrounding area.

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:*

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- 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 will result in no unreasonable privacy or overlooking impacts. All first floor windows to the eastern elevation are either fully opaque or opaque up to a height of 1.6m above finished floor level. The proposed ground and first floor rear windows are sufficiently set back from the rear boundary to mitigate any potential privacy impacts. The usability and overall impact of the proposed swimming pool is restricted by its minimal size.

*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 provides sufficient privacy and sunlight access to the subject site and adjoining properties.

*Objective 3) To encourage awareness of neighbourhood security.*

Comment:

Existing opportunities for passive surveillance are retained.

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 first floor setback 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 of the street, the street edge and the landscape character of the street.*

Comment:

The proposed front setback remains consistent with the streetscape and the non-compliant side wall is located behind the existing ridge, approximately 13m from the front boundary.

*Objective 2) To ensure and enhance local amenity by:*

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- 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:

All windows in the non-compliant wall are suitably designed for privacy and a full assessment of sunlight access is completed under Part 3 General Principles of Development. The proposal 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 proposed setbacks are considered adequate in the context of the site and surrounding area.

*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 does not result in any 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 total open space non-compliance is existing.

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

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The site as existing contains only one car parking space. The provision of an additional space would result in unreasonable visual impact on the streetscape and further front and side setback non-compliances.

#### **4.4.5 Earthworks (Excavation and Filling)**

The proposed excavation is limited to the swimming pool.

#### **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

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and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1187 for Alterations and additions to an existing semi-detached dwelling including a swimming pool on land at Lot 1 DP 511797, 4 Pacific Parade, MANLY, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-00 Site and Roof Plan	Issue B, 28 August 2018	Thodey Design
DA-03 Proposed Floor Plans	Issue B, 28 August 2018	Thodey Design
DA-04 Elevations	Issue B, 28 August 2018	Thodey Design
DA-05 Elevations - Sheet 2	Issue B, 28 August 2018	Thodey Design
DA-06 Sections	Issue B, 28 August 2018	Thodey Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A320287_04	10 July 2018	Thodey Design

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** DA2018/1187

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

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

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2008
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Security Bond

A bond (determined from cost of works) of \$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)

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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](http://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. **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.

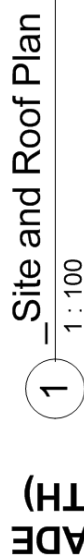
Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

6. **Fencing**

The proposed fencing in the rear yard is to be contained wholly within the subject site and is to be a maximum of 2m above ground level at any point.

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

Reason: No adjoining owner's consent was provided for boundary fencing; to maintain the amenity of private open space on the subject site and adjoining properties.



PACIFIC PARADE  
(20.115M WIDTH)

# Thodey Design

14 Bridge Road, Queenscliff  
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0418 206 225

thodey design  
ABN: 54 532 442 622

ABN: 54 532 442 622

**DEVELOPMENT APPLICATION TO NORTHERN BEACHES COUNCIL**  
**4 PACIFIC PARADE, MANLY, 2095**

SHEET NO	SHEET NAME	REV	SHEET NO	SHEET NAME	REV	SHEET NO	SHEET NAME	REV
DA-00	TITLE SHEET, SITE AND ROOF PLAN	B	DA-05	ELEVATIONS - SHEET 2	B			
DA-01	SITE ANALYSIS	B	DA-06	SECTIONS	B			
DA-02	EXISTING FLOOR PLANS	B	DA-07	WINTER SHADOWS	B			
DA-03	PROPOSED FLOOR PLANS	B	DA-08	SCHEDULE OF EXT. FINISHES	B			
DA-04	ELEVATIONS	B	DA-09	STORMWATER PLAN AND BASIS REQUIREMENTS				B

Address: 4 Pacific Parade, Manly

Client: Kate O'Ryan-Roeder and Russell Barry

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Project Number	Project Status
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2013-1337 Issued for DA

# TITLE SHEET, SITE AND ROOF PLAN

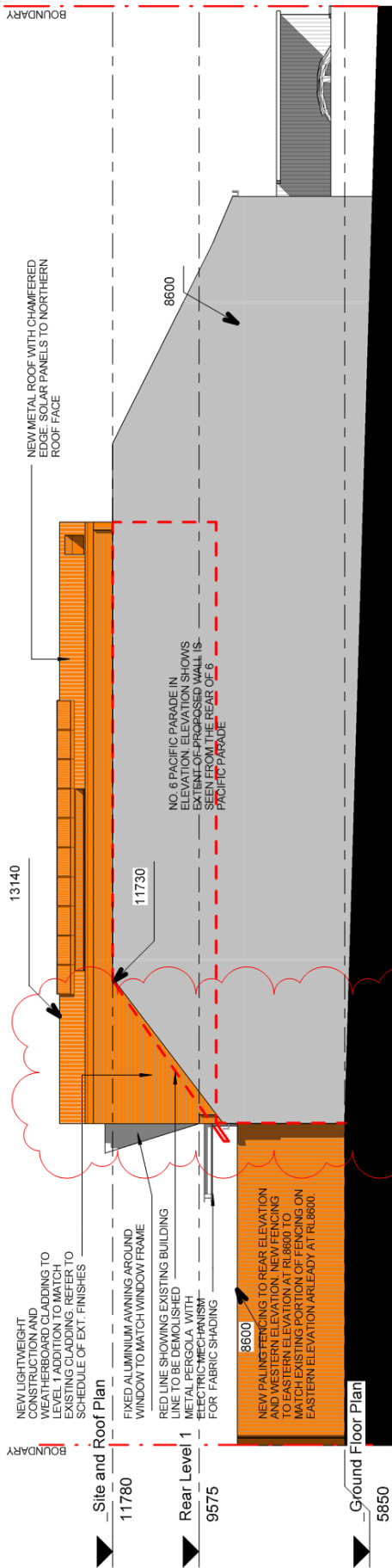
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Drawing

DA-00 B

Print Date & Time 28/08/2018 11:46:48 AM





Scale @ A3	1 : 100
Drawing Number	DA-05
Issue	B
Print Date & Time	28/08/2018 11:48:14 AM

Project Number	2013-1337
Project Status	Issued for DA
Sheet	ELEVATIONS-SHEET 2

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ABN: 54 532 442 622

**Thodey Design**

<b>ITEM 3.4</b>	<b>DA2018/1043 - 57 ROBERTSON ROAD, SCOTLAND ISLAND - ALTERATIONS AND ADDITIONS TO AN EXISTING BOAT SHED</b>
<b>REPORTING MANAGER</b>	<b>MATTHEW EDMONDS</b>
<b>TRIM FILE REF</b>	<b>2018/624862</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report</b> <b>2 Site Plan and Elevations</b>

### **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 DA2018/1043 for alterations and additions to an existing boat shed on land at Lot 121 DP 12749, 57 Robertson Road, Scotland Island, subject to the conditions outlined in the Assessment Report.

---



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1043
Responsible Officer:	Nick Armstrong
Land to be developed (Address):	Lot 121 DP 12749, 57 Robertson Road SCOTLAND ISLAND NSW 2105
Proposed Development:	Alterations and additions to an existing boat shed
Zoning:	E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Ricardo Russo
Applicant:	Ricardo Russo
Application lodged:	20/06/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	26/06/2018 to 10/07/2018
Advertised:	Not Advertised
Submissions Received:	2
Recommendation:	Approval
Estimated Cost of Works:	\$ 6,500.00

### 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

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- determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## **SUMMARY OF ASSESSMENT ISSUES**

Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways  
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings  
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area  
Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark  
Pittwater 21 Development Control Plan - D15.14 Minimum frontage for waterfront development  
Pittwater 21 Development Control Plan - D15.15 Waterfront development

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 121 DP 12749 , 57 Robertson Road SCOTLAND ISLAND NSW 2105
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Robertson Road.</p> <p>The site is regular in shape with a frontage of 10.06m along Robertson Road and a depth of 69.495m. The site has a surveyed area of 790.4m<sup>2</sup>.</p> <p>The site is located within the E3 Environmental Management zone and accommodates one and two storey split level block and fiber cement residence located towards the road frontage. A boatshed, jetty and associated waterfront facilities are located adjacent to the site in the Pittwater Waterway.</p> <p>The site falls 20m from the road frontage to the water frontage with a slope of approximately 29.8%.</p> <p>The site contains numerous canopy trees which are located primarily within the setback to the dwelling from the waterway.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by low density residential dwellings located within heavily landscaped allotments.</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:

29/05/2018

Development Application DA2018/0893 for alterations and additions to the dwelling was lodged.

#### **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks consent for alterations and additions to an existing boatshed. In particular the proposal includes:

- Raising the floor level of the boatshed from 1.38m AHD to 1.70m AHD
- Adjusting the existing skid ramp to compensate for the raising of the 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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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&amp;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&amp;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&amp;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.</p> <p><u>Clause 92</u> of the EP&amp;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&amp;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&amp;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&amp;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&amp;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 DA2018/1043	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control</p> <p>Page 4 of 28</p>



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

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Ronald Coffee, dated March 2018) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject 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 2 submission/s from:

Name:	Address:
Steven Speter	PO Box 250 CHURCH POINT NSW 2105
Mr Stephen Crosby	13/1-3 Mandolong Road MOSMAN NSW 2088

**\*Note:** Council's automated system picked up two submissions being received from Stephen Crosby, who is the applicant for the subject application. These 'submissions' were actually letters prepared in  
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response to submissions received from the following neighbouring residents:

Steve Speter	55 Robertson Road, Scotland Island
Bluebird Projects Design Consulting	No address given

The following issues that have been raised within theses submissions included:

- Unauthorised works
- Boatshed to be used for habitation
- Public foreshore access

The matters raised within the submissions are addressed as follows:

- Unauthorised works  
Comment:  
Concerns were raised from neighbouring residents in regards to works to the boatshed having already been carried out without any consent being issued. Based on the plans submitted, some works to the boatshed have already been carried out which include the alterations to windows, doors and potential internal works. A development application cannot consider development which has already commenced. However, the main element of the work included within the current development application includes the raising of the boatshed to 1.70m AHD and associated skid ramp pitch amendment which has not been carried out and is still able to be considered within the context of this application. A condition will be included, should consent be granted, for a building certificate to be lodged to address all works carried out without prior consent.
- Structure used for habitation  
Comment:  
Concerns were raised from neighbouring resident stating that the raising of the boatshed enables it to be used for the purposes of habitation. Control D15.15 of Council's P21 DCP prohibits the use of a boatshed for any other purpose than the storage of light watercraft and associated equipment: *'Boatsheds cannot be used for any other purpose than the storage of small boats and/or boating equipment. The incorporation any internal kitchen facilities, habitable rooms, shower or toilet facilities shall not be permitted.'*

A condition has been included for to ensure that no shower or toilet facilities are to be installed within the boatshed and for this structure not to be used for the purposes of separate habitation.

- **Foreshore access**  
Comment:  
Concerns have been raised regarding the buildup of construction material preventing public foreshore access adjacent to the subject property. Upon conducting a site inspection (05/07/2018) this was found to be evident. CI 7.8 of PLEP 2014 and Control D15.15 of P21 DCP require foreshore properties to provide continuous public foreshore access. Should consent be granted, a condition will be included to ensure that public foreshore access is to be maintained at all times adjacent to the subject property and associated boatshed and to ensure that no construction material is to be stored on the timber decking to the south of the boatshed.



## MEDIATION

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

## REFERRALS

Internal Referral Body	Comments	
Environmental Health (Acid Sulphate)	Was sufficient documentation provided appropriate for referral?	YES
	Are the reports undertaken by a suitably qualified consultant?	N/A
	What class is the site in on the PLEP 2014 Acid Sulfate Soils Map?	Class 1
	Is there risk of acid sulfate soil disturbance?	NO
	Will the excavations exceed the depth determined in the risk map?	N/A
	Does the report adequately address acid sulfate risk mitigation?	N/A
	Have you considered disposal of water during excavation, pump out etc.	N/A
	Have you considered disposal of contaminated soil.	N/A
	<b>General Comments</b>  Proposal is only to use existing piers and raise the level of boat shed.	
	<b>Recommendation</b>	APPROVAL - no conditions
Environmental Health (unsewered lands)	Comments completed by: Anthony Foy EHO	
	Date: 3.7.2018	
	Was sufficient documentation provided appropriate for referral?	YES
	Are the reports undertaken by a suitably qualified consultant?	N/A
	Is there a proposed on site sewage management system or an impact to existing onsite sewage management system?	N/A
	For residential applications have you considered AS1547 and Environmental Health & Protection Guidelines?	N/A
	For commercial applications have you	N/A

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Internal Referral Body	Comments
	<p>considered Guidelines for Management Private Recycled Water Schemes and applied the residential guidelines where applicable?</p> <p>Are separate land application areas provided for pool water, waste water from the premises and storm water?</p> <p>Is approval to install and approval to operate applicable? - if so, recommend the DAO refer commercial waste water systems to Department of Energy &amp; Water.</p> <p><b>General Comments</b> Proposal is to raise the floor level of an existing boat shed. No impacts on Waste Water are proposed.</p> <p><b>Recommendation</b> APPROVAL - no conditions</p> <p>Comments completed by: Anthony Foy Date: 3.7.2018</p>
NECC (Bushland and Biodiversity)	<p>The proposal has been assessed against the following DCP Natural Environment controls:</p> <ul style="list-style-type: none"> <li>- B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community</li> <li>- B4.15 Saltmarsh Endangered Ecological Community</li> <li>- B4.16 Seagrass Conservation</li> <li>- B4.19 Estuarine Habitat</li> <li>- B4.20 Protection of Estuarine Water Quality</li> </ul> <p>The proposed development will not require the removal of vegetation and is within the existing development footprint. It is considered that, subject to conditions, the proposal can achieve consistency with the controls.</p>
NECC (Coast and Catchments)	<p>The property at 57 Robertson Road, Scotland Island has been identified as being affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. The Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>Based upon the survey plan provided in support of the DA, the foreshore edge treatment type for the subject property appears to be a rocky foreshore with a crest height at approximately RL 1.0m AHD. As such, in accordance with the Pittwater Estuary Mapping of Sea</p>



Internal Referral Body	Comments
	<p>Level Rise Impacts Study (2015), an estuarine planning level (EPL) of RL 2.73m AHD has been adopted by Council for this property.</p> <p>The DA proposes to raise the existing boat shed to achieve a FFL of RL 1.70m AHD. As the proposed FFL is still significantly below the EPL, the boat shed (including full height glazing to seaward facing doors on the northern and western elevations) is likely to be exposed to periodic inundation and wave impact forces during the design life of the structure including but not limited to:</p> <ul style="list-style-type: none"> <li>vertical uplift forces caused by waves propagating under the boat shed, jetty deck and skid ramp;</li> <li>horizontal (wave slamming) forces on the boat shed and glazed doors;</li> <li>horizontal forces on piers supporting the boat shed and jetty; and</li> <li>potential buoyancy effects and debris loadings.</li> </ul> <p>In accordance with the B3.7 Hazard Controls the applicant should demonstrate through an appropriate assessment of the relevant coastal hazards (prepared with input as necessary from a coastal engineer as defined by the Estuarine Risk Management Policy for Development in Pittwater) that the boat shed (including seaward facing glazed doors) can be structurally designed to withstand the likely forces caused by periodic wave action and tidal inundation for the design life of the development. Conditions requiring consistency with the control have been included within the draft consent attached to this assessment below.</p>
NECC (Development Engineering)	The proposed boat shed is to be raised on the existing piers. No Development Engineering objection is raised to the proposed development subject to the piers being certified by a structural engineer.
NECC (Riparian Lands and Creeks)	<p>There are no objections to this application on the basis of water quality.</p> <p>The waterfront land is Coastal and will be dealt with by another officer.</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.
NSW Department of Planning and Environment (SEPP 71 - Coastal)	No response has been received from the Department of Planning and Environment within 28 days of the application being notified. Therefore an assessment of the relevant assessment criteria found within SEPP (Coastal Management) 2018 (formerly SEPP 71) has been carried out within the relevant section further within this report.

**ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\***

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

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

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

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

#### **SEPP (Coastal Management) 2018**

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

#### **13 Development on land within the coastal environment area**

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

#### Comment:

The application includes the raising of the floor level of the existing boatshed, with no additional impact to the surrounding waterway or natural environment.

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



impact.

Comment:

Impact will be minimised as not additional works to the bed of the estuary or land itself will be required to be carried out within the context of the subject development.

**14 Development on land within the coastal use area**

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

Comment:

The proposed alterations to the existing boatshed is consistent with similar development within the surrounding area. The raising of the floor level of the boatshed, which results in the entire structure being raised by 320mm, will not contribute to a degradation of the surrounding coastal and built environment.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

**Pittwater Local Environmental Plan 2014**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
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Height of Buildings:	4m	4.46m	11.5%	No
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#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

#### Detailed Assessment

##### Zone W1 Natural Waterways

Boatsheds and skid ramps are not identified within the W1 Natural Waterways zone as being permissible development. However, under Schedule 1 Additional Permitted Uses Section 23 of PLEP 2014, boatsheds, jetties and water recreation structures are permitted with development consent.

##### 4.3 Height of buildings

See Clause 4.6 below for further discussion.

##### 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:	4m
Proposed:	4.46m (above 1.17m AHD)
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	11.5%

**\*Note:** 1.17m AHD refers to the Highest Astronomical Tide which is assessed as being the most relevant reference point for measuring the height of development within the waterway.

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 alterations to the boatshed will raise the overall height of the existing structure by 320mm to a maximum height of 5.63m AHD. Boatsheds are common development not just within the Lower Western Foreshores and Scotland Island Locality, but also in the wider Pittwater Estuary. The style of the boatshed is consistent with the design parameters for waterfront development identified within control D15.15 of P21 DCP.

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

Comment:

The height of neighbouring boatsheds have been measured at 5.46m AHD (51 Robertson Road), 5.35m AHD (61 Robertson Road) and 5.95m AHD (69 Robertson Road) which result in an average height of approximately 5.59m (AHD). The proposed alterations to the existing boatshed results in a 4cm difference in the average height of similar neighbouring development. The development is therefore considered to be consistent with the height and scale of similar development in the surrounding area.

*c) to minimise any overshadowing of neighbouring properties*

Comment:

The development will not adversely impact upon the solar access of neighbouring properties.

*d) to allow for the reasonable sharing of views*

Comment:

Whilst the development is located adjacent to the waterway and is likely to be able to be viewed from neighbouring properties, the alterations to the boatshed is unlikely to contribute to a loss of views beyond a negligible amount.

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

Comment:



The design of the boatshed is unchanged and is consistent with similar development within the neighbouring area. The boatshed is located directly above the bed of the estuary with a slight fall from the property boundary towards the waterway. The boatshed is located on piles which are intended to be retained so as to not cause any further disturbance to the bed of the estuary.

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

Comment:

The development is not located within a heritage conservation area or within the vicinity of a heritage item. As no changes to the building footprint of the existing boatshed are proposed the development will not cause any additional impact to the natural environment.

**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 W1 Natural Waterways zone.

The underlying objectives of the W1 Natural Waterways zone

- *To protect the ecological and scenic values of natural waterways.*

Comment:

The development does not intend to alter the existing ecological or scenic value of the natural waterway as all changes proposed are above the existing building footprint. The development is consistent with the character of similar development within the nearby surrounding area and the wider Pittwater Waterway.

- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*

Comment:

The subject development poses no additional threat or impact to the natural value of the waterway.

- *To provide for sustainable fishing industries and recreational fishing.*

Comment:

Not impact on fish passages or recreational fishing areas.

- *To ensure that development does not adversely impact on the natural environment or obstruct the navigation of the waterway*

Comment:



No loss of vegetation or impact to the bed of the estuary beneath the existing boatshed. No changes to navigation of the waterway.

- *To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore*

Comment:

The residents of the subject site's access to the foreshore is unaffected. Concerns have been raised regarding the storage of building materials behind the boatshed, preventing public foreshore access. Conditions have been included to ensure that these materials are removed and that the decking behind the boatshed is to remain obstruction free so as to not prevent continuous public foreshore access.

**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 4m height limit for development within the waterway is recognised to be restrictive, especially with rising sea levels due to climate change creating additional constraints to development within the waterway. The development in this case does not seek to alter the existing design of the boatshed, but rather raise the entire structure 320mm to limit the potential of inundation caused at higher tides and storm events.

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

Comment:

The location of the boatshed is unchanged. The structure was originally located seaward of the Mean High Water Mark as the topography of the adjacent property created difficulties in locating the boatshed on freehold land. The raising of the boatshed does not unreasonably impact upon the built environment character of the surrounding area, where boatsheds of varying heights and designs are common. The increased floor level of the boatshed is intended to combat rising sea levels, creating an improved outcome for the residents.

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

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:



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

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

Comment:

The applicant has provided the following reasoning for seeking a request to the contravention of the height of buildings development standard:

- The proposed development is to raise the floor level of the existing 3.93m high boatshed by 320mm to protect the structure from rising sea levels.
- The height of the boatshed is entirely in accordance with P21 DCP D15.15 'Boatsheds shall be no greater than 4.5m in building height above the platform which it is built'.
- The nominated Highest Astronomical Tide (1.17m AHD) has been unchanged in Council's assessment for 30 years and does not take into account sea level rise or more recent (Cardno 2015) report into sea levels in Pittwater. The report puts a sea level rise of 0.42m at 2078 (relative to 2010), giving a tide of 1.59m AHD, with the 1 in 100 year ARI still water level at 1.94m AHD.
- The proposed boatshed floor level is entirely consistent in form and height with the guidelines for boatsheds as shown in P21 DCP D15.15, with the ridge level similar to many of these structures built over the last 20 years in Pittwater
- Many of the boatsheds on Scotland Island and in Elvina and Lovett Bays, are similar in height and scale
- There are no overshadowing issues affecting neighbouring properties
- Views from the neighbouring properties are unaffected as a result of the proposal
- The proposed raising of the boatshed will not affect public access along the foreshore

(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 request for the variation to the height of buildings development standards has successfully addressed all relevant criteria required for consideration under 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:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the W1 Natural Waterways zone in the PLEP 2014.



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

Comment:

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

### 7.8 Limited development on foreshore area

Technically the development is subject to the assessment of Clause 7.8 Limited development on foreshore area as the development is located forward of the Foreshore Building Line (FBL).

Boatsheds are indicated as being permissible development under subclause (2)(b) of CI 7.8. Consideration of the relevant assessment criteria as listed under CI 7.8 (3) and (4) are as follows:

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

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

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

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

- (i) pollution or siltation of the waterway, or*
- (ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
- (iii) an adverse effect on drainage patterns, or (iv) the removal or disturbance of remnant riparian vegetation, and*

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

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

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

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

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

Comment:

The development in question involves the alteration of the existing boatshed by means of raising the entire structure 320mm as the floor level of the current structure is regularly inundated the Pittwater Waterway. The works do not increase the existing building footprint of the development within the foreshore area and maintain consistency with similar boatsheds in the area and the general design



guidelines for boatsheds under P21 DCP D15.15 Waterfront Development. The only concern raised is the storage of building and construction materials on the timber deck to the south of the boatshed preventing continuous access to the foreshore. Conditions have been recommended to be included, should consent be granted, to ensure that public foreshore access is maintained at all times and that no construction materials are to be stored on the decking adjacent to the boatshed.

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

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

Comment:

As stated previously, conditions have been recommended to be included to ensure that all building materials are removed from the decking associated with the boatshed in order to provide continuous public foreshore access.

**Pittwater 21 Development Control Plan**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.20 Protection of Estuarine Water Quality	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.13 Development on Waterfront Land	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

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Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	No	Yes
D15.15 Waterfront development	Yes	Yes

#### Detailed Assessment

#### **D15.12 Development seaward of mean high water mark**

Development does not propose any further encroachment into the waterway.

#### **D15.14 Minimum frontage for waterfront development**

The subject site has a water frontage of approximately 13.77m which is below the minimum 15m requirement for multiple water front facilities below Mean High Water Mark. The existing site contains multiple facilities including a boatshed, skid ramp and jetty. As no additional facilities are proposed, this arrangement is considered acceptable.

#### **D15.15 Waterfront development**

The proposed alterations to the boatshed and skid ramp is consistent with the general design guidelines as listed under the control. Concerns were raised in relation to the use of the boatshed as a habitable structure, although conditions have been included to ensure that the boatshed is not used for these purposes and prohibiting the installation of internal kitchen, shower and toilet facilities.

#### **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 DA2018/1043 for Alterations and additions to an existing boat shed on land at Lot 121 DP 12749, 57 Robertson Road, SCOTLAND ISLAND, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Boat Shed Not to be Used for Habitable Purposes

At no time shall the boat shed be utilised or converted to provide for habitation. The boat shed must not be used for any other purpose than the storage of small boats, light watercraft and boating and marine equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities is not permitted.

Reason: To minimise risk to life associated with estuarine hazards for development in the coastal zone. (DACNEBOC2)

#### 2. Building materials, sedimentation

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

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**Reason:** Environmental Protection

3. **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 Plan, Section and Elevations	April 2018	Stephen Crosby & Associates

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Report, Ref. 1246	01/04/2018	Planning for Bushfire Protection

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

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

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

4. **Prescribed Conditions (Crown Land Only)**

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

**Reason:** Legislative Requirement (DACPLB09)

5. **General Requirements (Crown Land Only)**

(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) 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.

(c) 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.

(d) Where works are to be carried out to a Class 1a building, smoke alarms are to be installed throughout all new and existing portions of that Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.

(e) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(f) 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.

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

(h) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

(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) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.



Note: Systems can be registered at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

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

6. **Compliance with Standards (Crown Land Only)**

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

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

7. **Unauthorised Works**

This consent only relates to the raising of the boatshed by 320mm and alterations to the skid ramp. This consent does not include any works which have been carried out prior to this approval being issued including, but not limited to:

- o Changes to window and door openings of the existing boatshed
- o Internal fit out of the existing boatshed

A Building Certificate is required to be lodged to Council for any construction work that has previously commenced for which approval has yet to be issued.

#### FEES / CHARGES / CONTRIBUTIONS

8. **Security Bond**

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

9. **Estuarine Hazard Design Requirements**

The following applies to all development:



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

To ensure Council's recommended flood evacuation strategy can be achieved it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise potential risk associated with estuarine hazards for development in the coastal zone.

10. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 2.73m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- All structural elements below 2.73m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.73m AHD or waterproofed to this level; and
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.73m AHD.
- All interior power supplies for the boatshed (including electrical fittings, outlets and switches) must be located at or above or raised to 2.73m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above or raised to 3.23m AHD to avoid the likelihood of contact with splashing waves and spray. A residual current device must be installed in the electricity system to cut electricity supply if immersion occurs.

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

11. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life the development is able to withstand the wave impact forces and loadings as a result of periodic inundation and wave action.

Note: The potential for component fatigue (wear and tear) should be recognised for the less severe, but more frequent, wave impact loadings and the potential effects of corrosion processes on structural components should be considered.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

12. **Engineers Certification of Plans**

The structural design for the development shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Principal Certifying Authority.

Reason: To ensure structural engineering design is prepared by an appropriately qualified professional.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

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

The project manager is to erect signs advising all contractors and visitors to the site that no

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works or storage are to take place within the dripline of existing trees.

**Reason:** To protect and retain trees proposed for retention.

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

14. **Certification for the concrete piers**

An appropriately qualified and practicing Structural Engineer shall certify the existing concrete piers with the raised shed is structurally stable for its design life to the Principal Certifying Authority.

**Reason:** Compliance with this consent

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

15. **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.

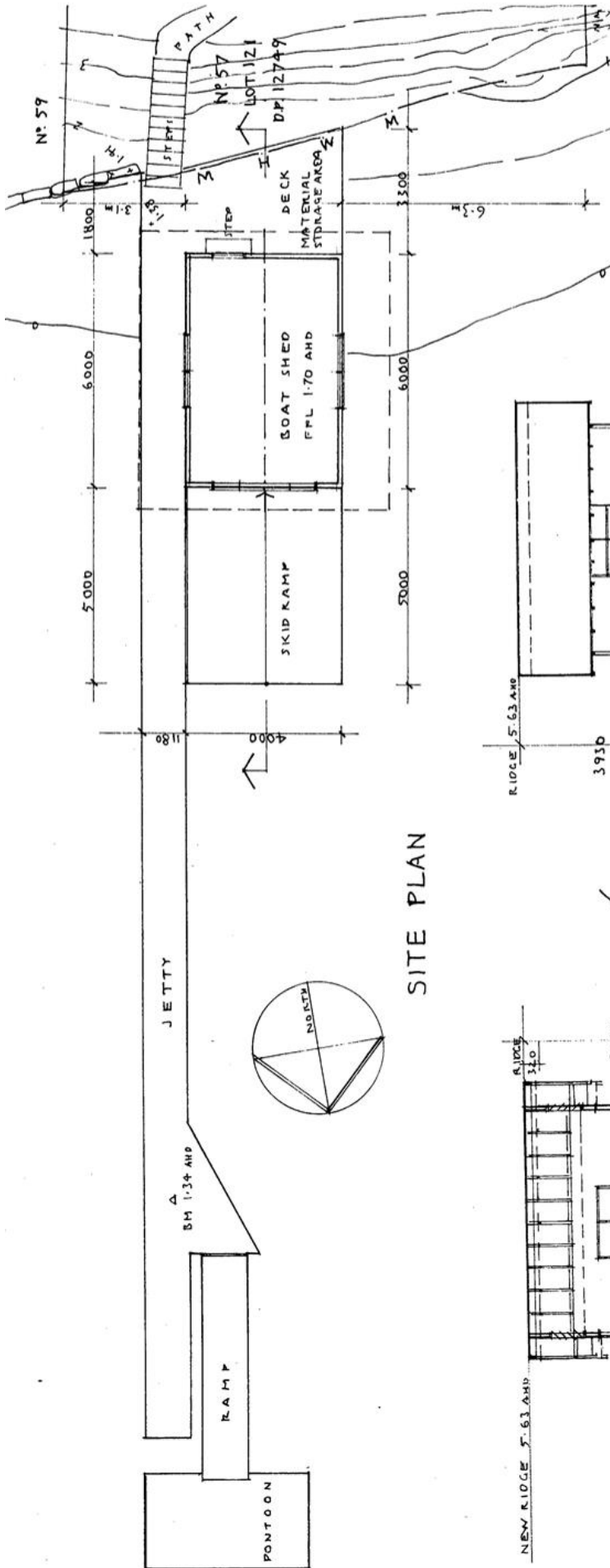
16. **Dead or Injured Wildlife**

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.

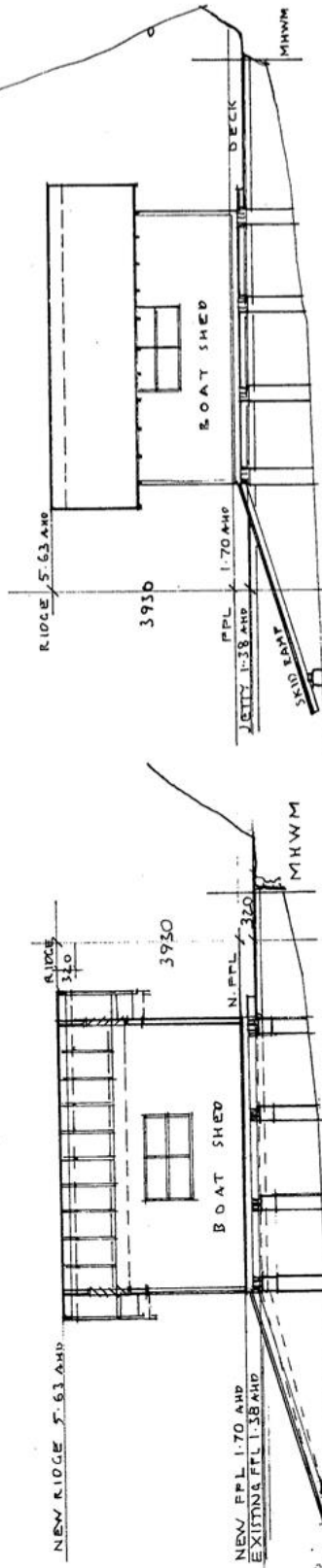
**Reason:** To mitigate potential impacts to native wildlife resulting from construction activity.

17. **Public Foreshore Access**

Continuous public access along the foreshore via the decking to the south of the boatshed is to be maintained at all times. No building, construction or any other material that would prevent public foreshore access is to be stored in this location.

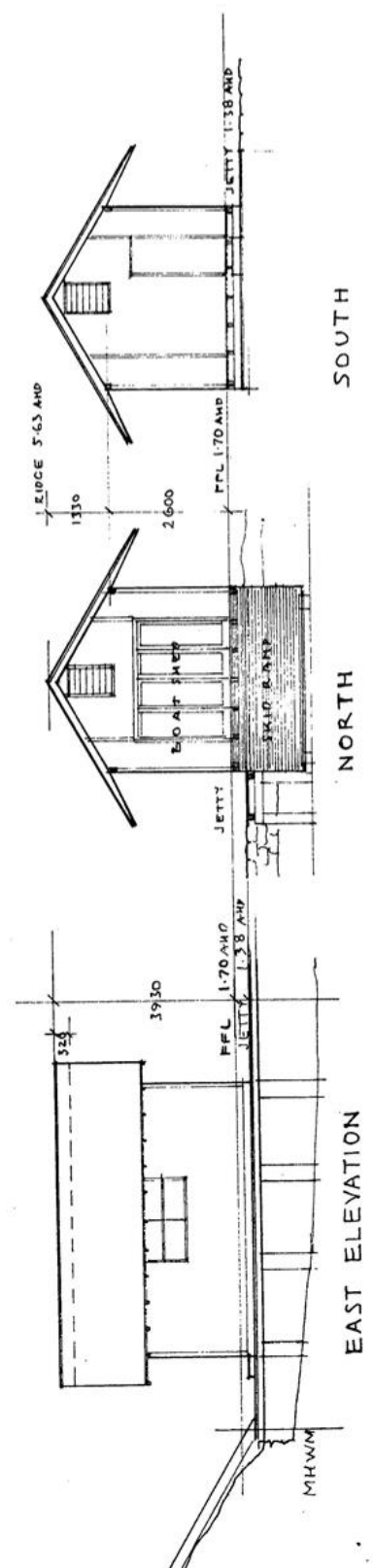


SITE PLAN



SECTION

WEST



EAST ELEVATION

NORTH

SOUTH

Stephen Crosby & Assoc.  
Pty. Ltd.

SCOTLAND ISLAND  
PO Box 204 Church Pt NSW 2105  
M 0695 047 513 E scoby@resproadentire.com.au

**BOAT SHED  
& SKID RAMP**  
57 ROBERTSON RD  
SCOTLAND IS.  
Lot 121 DP 12749

For R. RUSSO

**SITE PLAN,  
SECTION &  
ELEVATIONS**

Scale	1:100 AT AS
Date	APRIL 2018
Drawn	SC
Checked	SC
Drawing Number	2088 - DA 01

<b>ITEM 3.5</b>	<b>DA2018/0339 - 2 MACPHERSON STREET, WARRIEWOOD - COMMUNITY TITLE SUBDIVISION OF 1 LOT INTO 24 LOTS, INCLUSIVE OF 22 LOTS FOR FUTURE DWELLING HOUSES</b>
<b>REPORTING MANAGER</b>	<b>MATTHEW EDMONDS</b>
<b>TRIM FILE REF</b>	<b>2018/625998</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report 2 Subdivision Plan</b>

**PURPOSE**

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

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **refuse** Development Consent to DA2018/0339 for Community Title subdivision of 1 lot into 24 lots, inclusive of 22 lots for future dwelling houses on land at Lot 25 DP 5464, 2 Macpherson Street, Warriewood subject to the conditions outlined in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/0339
<b>Responsible Officer:</b>	Rebecca Englund
<b>Land to be developed (Address):</b>	Lot 25 DP 5464, 2 Macpherson Street WARRIEWOOD NSW 2102
<b>Proposed Development:</b>	Community Title subdivision of 1 lot into 24 lots, inclusive of 22 lots for future dwelling houses
<b>Zoning:</b>	R3 Medium Density Residential
<b>Development Permissible:</b>	No
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Karimbla Properties (NO. 32) Pty Ltd
<b>Applicant:</b>	Karimbla Constructions Services (NSW) Pty Ltd
<b>Application lodged:</b>	06/03/2018
<b>Integrated Development:</b>	Yes
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	23/03/2018 to 11/04/2018
<b>Advertised:</b>	24/03/2018
<b>Submissions Received:</b>	3
<b>Recommendation:</b>	Refusal
<b>Estimated Cost of Works:</b>	\$ 0.00

### 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;

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

## **SUMMARY OF ASSESSMENT ISSUES**

Assessment - Strategic and Place Planning (S94 Warriewood Valley)  
 Pittwater Local Environmental Plan 2014 - 6.1 Warriewood Valley Release Area  
 Pittwater Local Environmental Plan 2014 - 7.10 Essential services  
 Pittwater 21 Development Control Plan - A4.16 Warriewood Valley Locality  
 Pittwater 21 Development Control Plan - C6.1 Integrated Water Cycle Management  
 Pittwater 21 Development Control Plan - C6.2 Natural Environment and Landscaping Principles  
 Pittwater 21 Development Control Plan - C6.4 The Road System and Pedestrian and Cyclist Network  
 Pittwater 21 Development Control Plan - C6.5 Utilities, Services and Infrastructure Provision  
 Pittwater 21 Development Control Plan - C6.7 Landscape Area (Sector, Buffer Area or Development Site)  
 Pittwater 21 Development Control Plan - C6.8 Residential Development Subdivision Principles  
 Pittwater 21 Development Control Plan - C6.9 Residential Land Subdivision Approval Requirements  
 Pittwater 21 Development Control Plan - C6.10 Additional Specifications for development of Buffer Area 1a to 1m  
 Pittwater 21 Development Control Plan - D16.5 Landscaped Area for Newly Created Individual Allotments  
 Pittwater 21 Development Control Plan - D16.6 Front building lines  
 Pittwater 21 Development Control Plan - D16.7 Side and rear building lines  
 Pittwater 21 Development Control Plan - D16.10 Private and Communal Open Space Areas

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 25 DP 5464 , 2 Macpherson Street WARRIEWOOD NSW 2102
<b>Detailed Site Description:</b>	<p>The site is legally described as Lot 25, Section C, Deposited Plan 5464, and is commonly referred to as 2 Macpherson Street, Warriewood ('the site'). The site is irregular in shape, with a 126.96m wide frontage to Macpherson Street to the south and a total area of 2.327 Hectares. The site adjoins Narrabeen Creek, the centreline of which forms the northern and eastern boundaries of the site.</p> <p>The site was formerly used for the purpose of a market garden; however the site has recently been cleared and is currently free of development. Whilst the central portion of the site appears to have been built up over time and is generally level (3.28 - 3.71m AHD), the perimeter of the site falls away in each direction towards the creekline, the western side boundary and the street.</p> <p>Macpherson Street is a two-lane roadway that was recently</p>



upgraded to alleviate impacts associated with flooding, and as a result, the roadway and adjacent footpath is elevated above natural grounds levels at a minimum RL of 4.16m AHD. Two access driveways have been constructed to provide vehicular and pedestrian access to the site.

A Sydney Water Sewerage Treatment Plant is located opposite the site on the southern side of Macpherson Street, with a seniors housing development currently under construction to the east, medium density residential to the north and an existing dwelling to the west. The site is identified as Buffer Area 1M of the Warriewood Valley Release Area, as shown on the Warriewood Valley Release Area Map of PLEP 2014.

Map:



#### SITE HISTORY

On 27 November 2014, Development Application N0431/14 was lodged with Council, seeking consent for the construction of thirty semi-detached dwelling houses and associated infrastructure at the subject site.

On 18 December 2014, Development Application N0431/14 was refused by Council for the following reasons:

1. *The proposed development is inconsistent with the objectives of clause 6.1 of Pittwater Local Environmental Plan 2014, specifically the need for development to be undertaken in accordance with the Warriewood Valley Strategic Review, which identifies that the subject site has no capacity for residential development. The "no dwellings" yield prescribed by clause 6.1(3) of Pittwater Local Environmental Plan 2014 prohibits residential development on the site, and cannot be varied pursuant to clause 4.6 of Pittwater Local Environmental Plan 2014.*

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On 24 December 2014, the Applicant lodged a Class 1 Appeal with the Land and Environment Court of NSW in regards to the refusal of Development Application N0431/14. The proceedings were ultimately listed for a separate 'question of law' hearing to address the following:

*Is the "no dwellings" specification for 'Buffer area 1m' in the table to clause 6.1(3) of the Pittwater Local Environment Plan 2014 ("PLEP") a 'development standard' to which clause 4.6 of the PLEP applies?*

On 21 May 2015, the Justice Pain found in favour of Council and agreed that the "no dwellings" specification for the site in clause 6.1(3) of PLEP 2014 was in fact a prohibition and not a development standard.

On 17 November 2016, the Applicant lodged a Planning Proposal (PP0003/16), which seeks to amend the provisions of clause 6.1(3) of PLEP 2014 to provide for 22 dwellings on the subject site.

On 31 January 2017, Council resolved not to support the Planning Proposal for the following reasons:

1. *It is inconsistent with the relevant strategic study being the 'Warriewood Valley Strategic Review Report (2013)', endorsed by the former Director General of the Department of Planning and Infrastructure on 26 June 2013 and adopted by Pittwater Council on 12 June 2013.*
2. *It has not demonstrated adequate strategic merit or site-specific merit in line with the 'NSW Planning & Environment's Planning Proposals: A guide to preparing planning proposals (2016)'.*
3. *The information submitted to support the planning proposal for 2 Macpherson Street, Warriewood is substantially deficient.*
4. *It is inconsistent with Local Planning Direction '4.3 Flood Prone Land' (issued under Section 117 (2) of the Environmental Planning and Assessment Act 1979) and insufficient justification has been provided to support the inconsistency.*

On 10 March 2017, Council received notice that a request for a Rezoning Review had been submitted for consideration by the Sydney North Planning Panel.

On 12 April 2017, the Sydney North Planning Panel determined that the Planning Proposal should proceed to Gateway Determination.

On 30 June 2017, Council received notice from the delegate of the Greater Sydney Commission that the Planning Proposal should proceed, subject to condition in the Gateway Determination.

On 18 August 2017, Development Application N0398/17 was lodged with Council, seeking consent for the construction of a roadway and associated civil works at the subject site.

On 6 March 2018, the subject Development Application DA2018/0339 was lodged with Council.

On 4 July 2018, the Sydney North Planning Panel determined to recommend to the Minister that the proposed instrument (the Planning Proposal) should be made.

On 8 August 2018, the applicant lodged an appeal with the NSW LEC against the deemed refusal of N0398/17.

At the time of concluding this assessment report, N0398/17 had not been determined by the NSW LEC and the Planning Proposal had not been gazetted.



## PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the Community Title subdivision of the site into:

- 22 lots for future residential dwellings (Lots 2-23),
- 1 Community Lot (Lot 1), and
- 1 lot to be dedicated to Council (inner creekline corridor) (Lot 24).

The proposal is essentially a paper subdivision, with no physical works proposed. Rather, the proposal is entirely reliant upon the road and civil works proposed under a separate application (N0398/17), which is currently undetermined and is the subject of a deemed refusal appeal before the NSW LEC. The uncertainty associated with the works proposed as part of N0398/17 has significant ramifications upon the suitability of the proposed development, and Council cannot approve the subject application without certainty of the works anticipated/approved by N0398/17. Nonetheless, the application has also been considered and assessed on the assumption that the works proposed by N0398/17 will proceed in the form currently proposed.

It is noted that page 2 of the SOEE states that the "DA has been lodged in accordance with Division 2A Clause 83B of the Environmental Planning and Assessment Act 1979". The former clause 83B of the EP&A Act related to staged development applications, currently referred to as concept development applications in clause 4.22 of the EP&A Act. With the exception of a reference to the lodgement of a future DA for dwellings, the application does not explain or clarify this statement in any further detail, and does not provide whether the subject application is made in relation to the first stage of development, or how many further stages should be anticipated. As such, the application has not been considered as a staged or concept development application.

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	Planning Proposal PP0003/16, which seeks to amend the dwelling yield prescribed for the site by clause 6.1(3) of PLEP 2014, is relevant to the subject application. See discussion further in the report.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development

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Section 4.15 Matters for Consideration'	Comments
Assessment Regulation 2000 (EP&A Regulation 2000)	<p>consent. These matters can be addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be 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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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	Noting that the proposed development is prohibited, the site is considered unsuitable 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	This assessment has found the proposal to be contrary to the relevant provisions of PLEP 2014 and P21 DCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be 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:

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Name:	Address:
Warriewood Residents Association Incorporated	25 Utingu Place BAYVIEW NSW 2104
Mr Michael Bucknell	136/79-91 Macpherson Street WARRIEWOOD NSW 2102
Mr Richard John McIntyre	4 Macpherson Street WARRIEWOOD NSW 2102

The matters raised within the 3 submissions received are addressed as follows:

- **Potential for future residential flat building**

Comment: A submission was received which states that "Meriton don't build houses", with a suggestion that if approved, the development would be further intensified to provide for residential flat buildings. The application before Council is for a community title subdivision to provide for 22 dwelling houses. If the Applicant was to obtain development consent, and the intent for the site was to change, a subsequent development application would be required and the public would be notified.

- **Maintenance of the land as open space**

Comment: A submission was received which requested that the land remain free of development for open space and playing areas. The land is zoned R3 Medium Density Residential, privately owned and the land owner has chosen to seek consent to develop the land. Whilst dwellings are prohibited on the site, the land may be developed for a number of other permissible land uses.

- **Flood Impacts**

Comment: A submission has been received which raises concerns regarding the potential flood impacts associated with developing the site, with particular concern expressed in regards to the amount of fill necessary to build up the site to the relevant flood planning levels. The subject application does not propose any earthworks, but rather relies upon a separate development application (N0398/17) which proposes to fill the central portion of the site to the Flood Planning Level (FPL). These works are being separately considered as part of the current LEC proceedings in relation to N0398/17.

However, neither the separate civil works application nor the subject subdivision proposal has considered the potential impacts upon flood storage associated with future dwellings. This is discussed further in regards to clause C6.1 of P21 DCP.

- **Inconsistencies in information**

Comment: Concern has been raised regarding a number of inconsistencies in the information provided. The inconsistencies in the information presented by the applicant are acknowledged.

- **Access to Macpherson Street**

Comment: A submission has been received in objection to the maintenance of access to Macpherson Street, with a claim that it is inconsistent with the provisions of clause C6.24 of P21 DCP. It appears that this is an incorrect reference to the control and the relevant clause is C6.10 of P21 DCP. The location of the roadway and the entrances to Macpherson Street has been considered under a separate development application to which this application relies. Clause C6.10 provides that no new access driveways shall be permitted, and the application seeks to



rely upon existing driveways constructed by Council.

- **Land to be dedicated to Council**

Comment: A submission was received which states that Council should not provide a S94 offset for the dedication of the creekline corridor, as the land is unusable for a building. Whilst the creekline corridor land is unsuitable for residential development, Council has an adopted strategy, as outlined in the *Warriewood Valley Development Contributions Plan*, to ensure the rehabilitation and reconstruction of creeklines and the dedication of creekline land to Council. One way to ensure consistency with the adopted strategy, is to offset the value of the creekline against any contributions payable to Council. The value of this offset is also prescribed by the *Warriewood Valley Development Contributions Plan*, and is standard throughout the Release Area, irrespective of what the land is currently used for.

- **Compliance with development controls**

Comment: A submission was received which states that Council should request the applicant to demonstrate that future development can comply with the prescribed building envelope, being a plane projected at 45 degrees from a height of 3.5m from the side boundary. The building envelope development control does not apply to land in Warriewood Valley. The same submission also makes reference to 3 other built form controls that are not applicable to the subject site. A detailed assessment of the relevant development controls is provided further in this assessment report, below.

- **Privacy**

Comment: A submission was received regarding the 6m setbacks between the proposed indicative building footprints. This is discussed further with regards to the side and rear building line control prescribed by clause D16.7 of P21 DCP.

- **Dwelling yield**

Comment: A submission was received regarding the proposals inconsistency with the "no dwelling" yield prescribed by clause 6.1(3) of PLEP 2014. This is discussed in further detail in the report, below.

## MEDIATION

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

## REFERRALS

Internal Referral Body	Comments	
Environmental Health (Contaminated Lands)	Was sufficient documentation provided appropriate for referral?	YES
	Is the site potentially contaminated?	YES
	Are the reports undertaken by a suitably qualified consultant?	YES
	Do the reports reflect the requirements of	YES

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Internal Referral Body	Comments
	SEPP 55 & Guidelines for Assessing Contaminated Sites?
	Have you considered the list of potential contamination sites where phase 1 is required under SEPP55?
	Does the information submitted, and/or imposition of conditions, allow the site to be validated safe for its intended use?
	<b>General Comments</b>  Subject to compliance with Environmental Health comments in DA N0398/17, Environmental Health has no objections to this proposal
	<b>Recommendation</b>  APPROVAL - subject to the
	Comments completed by: Mary Shimon  Date: 28 June 2018
NECC (Bushland and Biodiversity)	Council's Biodiversity Officer has no objection to the proposed paper subdivision, noting that the impacts were more appropriately considered against the separate civil works development application.
NECC (Development Engineering)	<p>Reference is made to a separate Development Application (Council ref. N0398/17) for civil works including the construction of a private road and associated drainage works. Development Engineers have issued conditions for the above application requiring the construction of on-site stormwater detention system as the applicant failed to demonstrate that the removal of the on-site stormwater detention system would not be detrimental to the development.</p> <p>In light of the above Development Engineers have reviewed the proposal and advise the proposal cannot be supported due to the following reason.</p> <p>1. Insufficient details to demonstrate compliance with the Warriewood Valley Urban Land Release Water Management Specification with regards to onsite stormwater detention system.</p> <p>Not supported for approval due to lack of information to address:</p> <ul style="list-style-type: none"> <li>Stormwater drainage for the development in accordance with Northern Beaches Council's - Pittwater DCP21.</li> </ul>
NECC (Riparian Lands and Creeks)	There are no water quality or riparian issues with the proposed subdivision. Sufficient space for the water management facilities exists in the private buffer to the creek area.

Internal Referral Body	Comments
NECC (Stormwater and Floodplain Engineering – Flood risk)	The site is subject to high hazard flooding conditions. Future subdivision of the property relies on civil works to fill the future lots to above the Flood Planning Level and cutting to offset this and not impact flooding for neighbouring properties. These works are the subject of a separate Development Application. The civil works as outlined in Development Application number N0398/17 are not sufficient to maintain compliance with Section C6.1 of the Pittwater 21 Development Control Plan. The subdivision plan depicts that the future allotments will not be wholly located above the Flood Planning Area as required in Section C6.1. As a result the application is recommend for refusal.
Strategic and Place Planning (Urban Design)	<p>The proposal in its current form cannot be supported for the following reasons;</p> <p>The issue of setting a 'zero lot boundary' and the proposed boundary setbacks are generally not consistent of the detached dwelling character of the existing land use pattern and subdivision in the area.</p> <p>More information is required to assess; building bulk, scale, building envelope, amenity (visual and acoustic), landscape and private open space allocations.</p> <p>The following context and site analysis issues need to be addressed as follows;</p> <ul style="list-style-type: none"> <li>- Responding to context</li> <li>- Site Planning and Design</li> <li>- Impacts on the streetscape</li> <li>- Impacts on neighbours</li> <li>- Internal Site Amenity</li> </ul>
Traffic Engineer	<p>Proposal is to subdivide the subject site into 22 residential lots and 2 residual lots.</p> <p>The new proposed road will enter and exit onto Macpherson Street.</p> <p>Macpherson Street is a local collector road which falls under Council's ownership.</p> <p>The proposed circulating road is intended to be a private road. As this road will only be servicing the lots within, Traffic raise no objection to the road remaining in private ownership. Appropriate means to ensure this is documented appropriately will need to be managed by planners.</p> <p>The Traffic team will require that applicant submit a signage plan that will need to properly notify of the 'one-way' configuration, and additionally the applicant will need to ensure that the entry treatments are undertaken in such a way as to differentiate between private and public road reserves.</p> <p>The frontage of the current site along Macpherson Street will require</p>



Internal Referral Body	Comments
	the formalisation of the kerb and gutter and Footpath. These are to be constructed in accordance with Council's DCP and Public Domain technical manuals. Council's development engineer should review the requirements to ensure compliance.
Waste Officer	<p>Waste services referral</p> <p>Further information is required from the applicant to determine whether permission will be given to Council to drive on the private road.</p> <p>If the the intention is for Council to drive on the road to provide a waste service, the road will need to be designed to support a heavy rigid vehicle and accompanied with engineering diagrams to demonstrate swept paths. In addition, indemnity applied to Lot 1 (the road) and any other relevant lots for Council and its waste contractors to drive on. A neighborhood management statement may also be required. Each dwelling will be provided individual bin sets under this arrangement.</p> <p>If the intention is the waste will be collected from Macpherson street, the applicant will need to allocate a lot for the design and location of a bin room where the waste bin will be stored and collected from. Under this arrangement the dwellings will be provided a shared service.</p>

External Referral Body	Comments
Integrated Development – NSW Rural Fire Service (Subdivisions and Special Fire Protection Purposes under Section 100B of Rural Fires Act)	General Terms of Approval were provided by the NSW RFS.

#### **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 had been previously used as a market garden. Whilst this former use could have posed a risk of contamination, the subject application is reliant upon a separate civil works development application (N0398/17), which includes the remediation of the site. Should N0398/17 be approved, it is considered that the site will ultimately pose no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55. Without reliance upon N0398/17, the subject application will need to separately demonstrate that the site is suitable for the residential subdivision proposed.

**Pittwater Local Environmental Plan 2014**

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Yes

Principal Development Standards

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

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
6.1 Warriewood Valley Release Area	No
7.1 Acid sulfate soils	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	No

Detailed Assessment

**6.1 Warriewood Valley Release Area**

The subdivision of land is permissible with consent under the provisions of clause 2.6 of PLEP 2014, and dwelling houses are permissible with consent within the R3 Medium Density zone. However, the proposed development to accommodate 22 dwelling houses is prohibited by virtue of clause 6.1(3) of PLEP 2014, which limits the dwelling yield of the site to "no dwellings". The dwelling yield prescribed by clause 6.1(3) of PLEP 2014 was confirmed to be a prohibition by the Land and Environment Court of NSW when the Applicant previously challenged council's position in relation to this site in the matter of *Karimbla Constructions (NSW) Pty Ltd v Pittwater Council*.



The applicant has lodged a planning proposal to increase the dwelling yield of the site from 0 to 22 dwellings (consistent with this proposal). Pursuant with section 3.39 of the Act, nothing in the Act prevents the making of a development application for consent to carry out development that may only be carried out if the LEP is appropriately amended, or the consideration of such application by the consent authority. Furthermore, the draft LEP must be considered pursuant to the provisions of s4.15 of the Act.

Whilst the application was considered by the SNPP on 4 July 2018, who determined *"to recommend to the Minister that the proposed instrument should be made"*, the amendments are yet to be made or publically gazetted. Council is also unaware as to what form the amendments will take, and in particular, whether there will be any transitional or savings provisions that may affect the application.

At this point in time, the proposed development remains prohibited, and despite the SNPP's recommendation to adopt the proposed amendments, Council cannot be certain that the amendment will be made or whether it will provide the mechanism to permit the proposed development in the context of the subject development application. With this in mind, the proposal is recommended for refusal in this regard.

#### 7.10 Essential services

Clause 7.10 of PLEP 2014 provides that Council must be satisfied that all essential services are available on the site, or that adequate arrangements have been made to ensure that they will be available when required. The proposal fails in this regard, as follows:

- The proposal was not supported by correspondence from Sydney Water or the relevant energy provider to confirm that the additional load associated with 22 residential lots can be accommodated by the existing infrastructure.
- The application was not supported by civil engineering or subdivision plans demonstrating the provision of all necessary services to each individual lot,
- The application does not propose stormwater management infrastructure associated with the 22 residential lots, and does not detail how the stormwater associated with the site as a whole will be managed.
- The application does not demonstrate suitable vehicular access arrangements to each lot.

Council cannot be satisfied that adequate arrangements have been made to ensure that all essential services are available to the individual lots, and as such, the proposal is recommended for refusal in this regard.

#### Pittwater 21 Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	Macpherson Street: 6.5m	6.5m	-	Yes
	Internal Road: 4m to garage and 5.5m to dwelling	4m	27%	No
Rear building line	4m	3m	33%	No
Side building line	Zero lot line (limited to 13m) then 0.9m	Zero lot line (22m)	69%	No

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	0.9m (ground) 1.5m (upper level)	2.5m	-	Yes
Landscaped area (individual lots)	35% & 4m wide	42.2% - 49%, 3m wide	33%	<b>No</b>
Private Open Space	20m <sup>2</sup> - 24m <sup>2</sup> & 4m wide	area unknown, 3m wide	33%	<b>No</b>

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.16 Warriewood Valley Locality	No	No
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B3.13 Flood Hazard - Flood Emergency Response planning	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	No
C6.1 Integrated Water Cycle Management	No	No
C6.2 Natural Environment and Landscaping Principles	No	No
C6.4 The Road System and Pedestrian and Cyclist Network	No	No
C6.5 Utilities, Services and Infrastructure Provision	No	No
C6.7 Landscape Area (Sector, Buffer Area or Development Site)	No	No
C6.8 Residential Development Subdivision Principles	No	No
C6.9 Residential Land Subdivision Approval Requirements	No	No
C6.10 Additional Specifications for development of Buffer Area 1a to 1m	Yes	Yes
D16.1 Character as viewed from a public place	Yes	Yes
D16.5 Landscaped Area for Newly Created Individual Allotments	No	No
D16.6 Front building lines	No	No
D16.7 Side and rear building lines	No	No
D16.10 Private and Communal Open Space Areas	No	No

#### Detailed Assessment

##### **A4.16 Warriewood Valley Locality**

The desired future character statement for Warriewood Valley is prescribed by clause A4.16 of P21 DCP, which provides that the area is to be developed in accordance with the adopted planning strategy. The adopted planning strategy is outlined in the *Warriewood Valley Strategic Review Report* and the



*Warriewood Valley Strategic Review Addendum Report*, in addition to the provisions of PLEP 2014 and P21 DCP. The proposed subdivision to enable the provision of 22 dwellings is inconsistent with the adopted planning strategy, which prescribes that dwellings are prohibited on the site. Furthermore, the proposal is inconsistent with the majority of the applicable provisions of PLEP 2014 and P21 DCP, as highlighted by this report. As such, the proposal is also inconsistent with the desired future character of the locality.

### C6.1 Integrated Water Cycle Management

#### Water Management

The application does not provide any stormwater infrastructure associated with the proposed intensification of the subject site, inconsistent with the requirements of clause C6.1 of P21 DCP and the *Warriewood Valley Urban Land Release Water Management Specification* ('Water Management Specification'). Without such necessary infrastructure, or details that such necessary infrastructure will be available when required, Council cannot be satisfied that run off associated with any resultant dwelling house development will be appropriately managed, or that the peak flood levels and flowrates in Narrabeen Creek will not be exacerbated by the considerable increase in impervious surfaces associated with future dwelling house development. As the resultant sites could be developed under the provisions of SEPP (Exempt and Complying), Council cannot be satisfied that such essential water management infrastructure will ultimately be provided with any subsequent dwelling house, and as such, it is essential to provide infrastructure as part of the subdivision application.

See further discussion above from Council's Development Engineers.

#### Creekline Corridor

Clause C6.1 of P21 DCP provides that a 50m creekline corridor is to be provided on either side of the centreline of the creek, comprised of an inner 25m corridor to be dedicated to Council and an outer 25m corridor to be maintained in private ownership. The proposal is inconsistent with the requirements of clause C6.1 of P21 DCP in relation to the outer creekline corridor, as follows:

- the development control prescribes that no parts of residential lots are permitted within the outer creekline corridor, yet 9 or the 22 lots for future dwellings extend within the outer creekline corridor.
- the proposal does not include any landscape detail for the outer creekline corridor, and consistency with the requirement for 75% of the outer creekline corridor to contain "extensive strands of *Casurina glauca*, groves of *Eucalyptus robusta* with other native trees, an indigenous understorey and groundcovers" has not been demonstrated.

Overall, the application has not demonstrated adequate consideration of or consistency with the following outcomes of this control:

- *Development is designed with an integrated approach to water management and conservation, addressing water quality and quantity, watercourse and creekline corridors, stormwater and groundwater, and minimises the risk posed by flooding and adapts to climate change impacts.*
- *Establish a network of multi-functional living creekline corridors particularly Narrabeen Creek, Fern Creek and Mullet Creek for flood conveyance, environmental flows, flora and fauna habitat, water quality improvement, cyclist and pedestrian access, and drainage, linking the Warriewood Escarpment with the Warriewood Wetlands and Narrabeen Lagoon, and facilitates the long-term environmental protection of the receiving waters including the Warriewood Wetlands and Narrabeen Lagoon.*
- *Remnant native vegetation along creekline corridors, escarpment vegetation, and the Warriewood Wetlands, including stands of Swamp Mahogany, Forest and Swamp Oaks, and*



*Angophora Woodlands are conserved and restored to provide linkages and stepping stones for wildlife movement.*

- *A range of aquatic habitats within the creeks are protected and restored as natural creekline and wildlife corridors with riparian vegetation, providing a functioning habitat for birds and diverse native flora.*
- *Landscaping enhances the required functions of the creekline corridor and reduces the impact of utilitarian drainage structures on the open space.*

#### Flooding

The application is reliant upon a separate development application which proposes an internal loop road and civil works to raise the centre of the site to the FPL (4.29m AHD). However, whilst these works may be suitable for a non-residential form of permissible development, the applicant has not demonstrated that these works enable the suitability of the site for residential development. The internal loop road proposed in the separate application is at varied levels, generally ranging between 3.5m AHD - 4.0m AHD. The land in the centre of the site is then battered from the edge of this internal road, to reach a level of 4.29m AHD across the majority of the centre of the site. As the subject subdivision layout does not provide the required road verge, being 2.5m on either side of the roadway, the proposed residential allotments immediately adjoin the road pavement, and as a result, portions of the proposed lots fall below the FPL. The applicant has not demonstrated that a suitable dwelling footprint can be provided on each lot above the FPL, as required by the provisions of the Water Management Specification, and clause C6.1 of P21 DCP.

Furthermore, whilst the civil works application may be able to demonstrate that the vacant site (filled up to the FPL) would not have an unreasonable impact upon flood storage in both the FPL and PMF events, the subject application has not demonstrated that future works below the FPL and dwellings below the PMF will not have an unreasonable impact upon flood storage in FPL and PMF event, inconsistent with the provisions of clause C6.1 of P21 DCP.

#### **C6.2 Natural Environment and Landscaping Principles**

A landscape plan has not been provided to support the application. Whilst landscaping of the inner creekline corridor is proposed as part of the separate road and civil works development application (N0398/17), the remainder of the site will be free of vegetation and with no new landscaping proposed, the site will not achieve consistency with the requirements and outcomes of this development control.

#### **C6.4 The Road System and Pedestrian and Cyclist Network**

A new internal private road is proposed as part of a separate application (N0398/17). As part of N0398/17, the consideration of a "road reserve" and compliance with the *Warriewood Valley Roads Masterplan* was not required as the road was in effect a driveway within one large lot. However, the circumstances differ in the subject application, whereby consent is sought to subdivide the road from the residential allotments. The resultant road is non-compliant with the *Warriewood Valley Roads Masterplan*, and fails to provide the necessary road verge to accommodate a footpath or street trees which are otherwise provided throughout the Warriewood Valley Release Area. Overall, the proposal is inconsistent with the following objectives of this development control:

- *Safe, convenient and direct access by non-motorised means from residences to public transport, employment areas, adjoining sectors, open space, community facilities and other services.*
- *Provision of roads, including ones fronting areas of public open space, that accommodate public utilities, drainage systems and substantial street tree planting within the street network providing an attractive and spacious streetscape that includes a sense of address, where dwellings front*



*onto a street.*

#### **C6.5 Utilities, Services and Infrastructure Provision**

The development application does not provide any detail on how any of the resultant lots will be serviced, or who will be responsible for the maintenance of individual or communal infrastructure and services, resulting in non-compliance with the provisions of clause C6.5 of P21 DCP.

#### **C6.7 Landscape Area (Sector, Buffer Area or Development Site)**

The application has not provided sufficient detail to determine compliance with this control, noting that the one plan provided to support the application is limited to indicative building footprints and does not provide any detail regarding the provision of driveways, footpaths, areas of private open space or onsite detention systems.

#### **C6.8 Residential Development Subdivision Principles**

Clause C6.8 of P21 DCP provides a series of criteria to be addressed in relation to the subdivision of residential land. The SOEE has not addressed the provisions of this development control, and the indicative building envelope plan provided to support the application fails to demonstrate the following:

- that a suitable housing product can be provided on the site, with adequate consideration of necessary canopy tree plantings, the provision of private open space, vehicular access, car parking, rain water tanks and stormwater management facilities,
- that suitable titling arrangements are in place for the ownership and maintenance of essential services and infrastructure, and
- that zero lot lines are limited in length to 13m, and that suitable legal arrangements are in place between the burdened and benefiting properties proposed to allow for ongoing maintenance.

Without such information, the suitability and reasonableness of the proposed subdivision cannot be accurately determined, and Council cannot ensure that a high level of amenity is achieved for the individual allotments.

#### **C6.9 Residential Land Subdivision Approval Requirements**

Clause C6.9 of P21 DCP provides a series of approval pathways for the subdivision of residential land in the Warriewood Valley Release Area. The proposal is consistent with 'Pathway 1', being a proposal for subdivision of land only, with no dwellings proposed. However, the application fails to provide the necessary information, as outlined by this development control, including a building envelope plan which demonstrates the following:

- maximum permissible building envelope (including site coverage for a dwelling under the provisions of SEPP Exempt and Complying), specifying setbacks, storeys and articulation zones,
- landscaped areas and deep soil areas,
- preferred location for private open space,
- driveway location and location of any hardstand areas,
- garage size and location,
- any necessary easement, and

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- primary street frontages for lots with dual/multiple frontages.

Without such information, Council cannot be satisfied that the proposed subdivision will provide for future dwelling house development that is consistent with the provisions of P21 DCP or a development outcome that reflects the desired future character of the Warriewood Valley Locality.

#### **C6.10 Additional Specifications for development of Buffer Area 1a to 1m**

Clause C6.10 of P21 DCP prescribes that no new vehicular access is permitted to Macpherson Street. The proposal relies upon existing driveway crossings to the site, which are proposed to be retained under the separate civil works application currently under assessment (N0398/17). The application does not propose any new driveways to Macpherson Street, and as such, the proposal is consistent with this development control.

#### **D16.5 Landscaped Area for Newly Created Individual Allotments**

##### Landscaped Area

As discussed with regard to clause C6.7 of P21 DCP, the application has not provided sufficient detail to determine compliance with this control, noting that the one plan provided to support the application is limited to indicative building footprints and does not provide any detail regarding the provision of driveways, footpaths, areas of private open space or onsite detention systems.

##### Landscaped Treatment

The application has not addressed any of the landscaping requirements of this development control, with no landscaping works proposed.

#### **D16.6 Front building lines**

The proposed indicative building footprints comply with the 6.5m minimum setback requirement to Macpherson Street and the 4m minimum setback requirement for garages fronting new internal roads. However, the 4m setback for garages to the internal road assumes that a double garage will be provided on site, when the provisions of clause D16.1 of P21 DCP limit the proposed lots to single garages with tandem parking arrangements. As such, the minimum front setback is increased to 5.5m to allow a car to park forward of a single garage.

Furthermore, the 4m and 5.5m minimum front setback to the internal road assumes consistency with the *Warriewood Valley Roads Masterplan*, which requires a 2.5m wide landscaped verge on either side of the road pavement to accommodate a pedestrian footpath and street trees. The proposed subdivision does not provide a 2.5m wide verge, with only a 1m (average) setback between the road pavement and the front property boundaries, with no landscaping proposed.

Overall, the application has not demonstrated consistency with the minimum front building line setbacks applicable for the proposed lots, or that the proposed subdivision will provide the spatial separation and landscaped outcome anticipated by the collective provisions of P21 DCP.

#### **D16.7 Side and rear building lines**

The proposed development is inconsistent with the requirements for zero lot lines to be limited to 13m in length and for a minimum 4m rear setback to be provided on the ground floor. Of primary concern is the non-compliant 3m rear setback, which will result in inadequate spatial separation between dwellings, the inability to provide the 4m wide area of private open space required by clause D16.10 of P21 DCP, and the inability to provide appropriate landscaping to ensure consistency with the following



outcomes of this development control:

- *The bulk and scale of the built form is minimised and the impact of the proposed development on the adjoining properties is minimised.*
- *To create usable curtilage areas around buildings for viable access, landscaping and open space.*
- *Vegetation and natural features of the site is retained and enhanced within the development site design to screen the visual impact of the built form.*
- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties.*

#### **D16.10 Private and Communal Open Space Areas**

Whilst the subdivision plan provided does not indicate the likely provision of private open space (as required by clause C6.9 of P21 DCP), the indicative building footprints are located at a distance of 3m from the rear property boundaries such that the 4m minimum dimension for private open space required by this clause cannot be achieved.

#### **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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs

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- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

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

## RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2018/0339 for the Community Title subdivision of 1 lot into 24 lots, inclusive of 22 lots for future dwelling houses on land at Lot 25 DP 5464,2 Macpherson Street, WARRIEWOOD, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
2. The proposed 24 lot Community Title subdivision development, to enable 22 future dwellings at the subject site, is prohibited by virtue of the "no dwellings" dwelling yield prescribed by clause 6.1(3) of *Pittwater Local Environmental Plan 2014*.
3. The application does not demonstrate that all proposed allotments will be adequately serviced by essential infrastructure and insufficient information has been provided with regard to the future ownership and maintenance of such essential infrastructure, inconsistent with the provisions of clause 7.10 of *Pittwater Local Environmental Plan 2014* and clauses C6.1 (Integrated Water Cycle Management) and C6.5 (Utilities, Services and Infrastructure Provision) of *Pittwater 21 Development Control Plan*.
4. The proposed residential subdivision fails to achieve consistency with the requirements and outcomes of clause C6.1 (Integrated Water Cycle Management) of P21 DCP and the *Warriewood Valley Water Management Specification*, as the application:
  - o fails to provide an integrated water management solution for the site,
  - o does not provide on-site detention to ensure that peak flood levels and flowrates are not exacerbated by the future development of the 22 residential lots,
  - o fails to provide new residential lots that are flood free in the FPL event or demonstrate that all future dwelling houses will be located at or above the FPL,
  - o has not considered the impact upon flood storage associated with 22 future residential dwellings in both the FPL and PMF events.
5. The application does not have any regard for the development controls of *Pittwater 21 Development Control Plan*, and fails to demonstrate that the resultant residential lots can be developed with a high level of amenity, in accordance with the relevant provisions of *Pittwater Local Environmental Plan 2014* and *Pittwater 21 Development Control Plan*. In particular, the proposed development does not provide for the landscaped outcome prescribed by clause C6.2 (Natural Environment and Landscaping Principles) of *Pittwater 21 Development Control Plan*, and the indicative dwelling footprints cannot accommodate a dwelling that is consistent with the built form and amenity controls prescribed by Part D16 (Warriewood Valley Locality) of *Pittwater 21 Development Control Plan*.
6. Reliance upon works proposed within a separate, undetermined Development Application is considered to be unreasonable in the circumstances where the outcome of the separate application is not imminent or certain. Furthermore, Council cannot be satisfied that the



subject proposal could proceed in isolation, without the works proposed in the separate application. Overall, the application is not considered to represent the orderly development of the land.

