



northern  
beaches  
council

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held on

**WEDNESDAY 27 OCTOBER 2021**

A handwritten signature in black ink, appearing to read 'Ashleigh Sherry'.

**Ashleigh Sherry**  
**Manager Business Systems and Administration**



## **Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 27 October 2021**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
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## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 13 OCTOBER 2021**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Development Determination Panel held 13 October 2021 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>MOD2021/0621 - 135 RIVERVIEW ROAD, AVALON BEACH - MODIFICATION OF DEVELOPMENT CONSENT DA2018/2051 FOR DEMOLITION WORKS AND THE CONSTRUCTION OF A DWELLING HOUSE.</b>
<b>REPORTING MANAGER</b>	<b>Lashta Haidari</b>
<b>TRIM FILE REF</b>	<b>2021/733846</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report 2 Site Plan &amp; Elevations</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, **approves** Mod2021/0621 for Modification of Development Consent DA2018/2051 for Demolition works and the construction of a dwelling house on land at Lot 1 DP 1135396, 135 Riverview Road, Avalon Beach, subject to the conditions set out in the Assessment Report.

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0621
<b>Responsible Officer:</b>	Adam Mitchell
<b>Land to be developed (Address):</b>	Lot 1 DP 1135396, 135 Riverview Road AVALON BEACH NSW 2107
<b>Proposed Development:</b>	Modification of Development Consent DA2018/2051 for Demolition works and the construction of a dwelling house
<b>Zoning:</b>	E4 Environmental Living
<b>Development Permissible:</b>	Yes - Zone E4 Environmental Living Yes - Zone W1 Natural Waterways
<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>	David Leander Nichols Simon Keith Johnson
<b>Applicant:</b>	Burley Katon Halliday Pty Ltd
<b>Application Lodged:</b>	20/08/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	31/08/2021 to 14/09/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

This application is referred to the Development Determination Panel for determination as it has been submitted as a Section 4.55(2) Modification Application to a Development Application (DA2018/2051) which was determined by the same Panel.

The changes sought to the approved development are described throughout this report but the most controversial component is the relocation of an approved indoor spa to be outdoors, thus necessitating a 3m increase to the overall depth of the building. This change has attracted two submissions. Those submissions raise concern with (but not limited to) increased bulk, noise, a loss of visual privacy and impacts on trees caused by the extension.

On balance the works are considered to be substantially the same development as that of the approved consent, and the majority of works are a rationalisation of what has been approved and/or conditioned.

This report is submitted to the Panel with a recommendation for approval as it has been found that the modifications do not cause any unreasonable adverse amenity or environmental impact over and above that of the approved consent.

### **PROPOSED DEVELOPMENT IN DETAIL**

This Section 4.55(2) Modification Application seeks consent to modify Development Consent DA2018/2051 approved on 24 July 2019 for demolition works and the construction of a dwelling house.

The modifications sought include:

- modification of Condition no. 26(a) Amendments to the Approved Plans;
- reduction in garage GFA by 2sqm (previously a storeroom, now a powder room) including subsequent reduction in roof area and balcony below;
- deletion of windows GL.W2 and GL.W3 (ground floor south facing living room windows);
- enlargement of the lower ground floor by area 44.5 sqm located wholly underground
- deletion of window L-1.W4 (lower ground floor south facing rumpus window);
- relocation of approved spa from inside the house to outdoors including the construction of a supporting structure below to hide footings and infrastructure;
- addition of hedge planting along a portion of the northern boundary.

Herein this report these works are described as the 'development'.

### **ASSESSMENT INTRODUCTION**

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

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

### **SUMMARY OF ASSESSMENT ISSUES**

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - D1.11 Building envelope

Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 1135396 , 135 Riverview Road AVALON BEACH NSW 2107
<b>Detailed Site Description:</b>	<p>The site is slightly irregular in shape, with a 13.185m wide frontage to Riverview Road, a maximum depth of 84.67m and a total area of 1072m<sup>2</sup>. The site adjoins the Pittwater Waterway to the west, with existing waterfront facilities located partially on the subject site, and partially on an adjoining site (Lot 2 DP 1135396), which is in the same ownership. An existing dwelling is located somewhat centrally on the site, surrounded by a number of canopy trees. The site experiences a fall of 38.34m from the upper street frontage down towards the waterway, with a slope of approximately 45%.</p> <p>The site is identified within a mapped area containing Pittwater Spotted Gum Forest Endangered Ecological Community, and is subject to landslip and wave and tidal action. The site is dissected by the foreshore building line, which runs approximately parallel, at a distance of 20m, from the MHWM. The site is located within a low density residential environment, and is surrounded by single dwellings of varying age and character.</p>

Map:



### SITE HISTORY

- **Development Application No. DA2018/2051** for demolition works and the construction of a dwelling house, approved by Council's Development Determination Panel on 24 July 2019.



**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/2051, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/2051 for the following reasons:</p> <ul style="list-style-type: none"> <li>• the approved building height remains unchanged;</li> <li>• the approved building use remains unchanged;</li> <li>• the modifications sought are largely non-discernible from the public domain commensurate to the approval;</li> <li>• the modifications require a minor enlargement to the building footprint;</li> <li>• the modifications do not necessitate the removal of any additional vegetation; and</li> <li>• the modifications do not create any unreasonable impacts to neighbouring properties, over and</li> </ul>

Section 4.55 (2) - Other Modifications	Comments
	above any impacts that already exist approved by the parent consent.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2018/2051 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed

Section 4.15 'Matters for Consideration'	Comments
	development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</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 in the original 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 in the original 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 in the original 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 in the original 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	The site is considered suitable for the proposed development.

Section 4.15 'Matters for Consideration'	Comments
of the site for the 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 from 31/08/2021 to 14/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Gregory John O'Neill Mrs Bernadette Mary O'Neill	137 Riverview Road AVALON BEACH NSW 2107
Mr John Kenneth Mettam	133 Riverview Road AVALON BEACH NSW 2107

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

- Maintenance of screen planting
- Building material - exterior cladding of spa
- Impact on trees
- Overlooking and privacy
- Spa pump / equipment and fencing

The matters raised within the submissions are addressed as follows:

- Maintenance of screen planting  
Comment:  
The proposed *Acmena Smithii Minor* hedge screen planting reaches a height of 3-4m at maturity and thus provides an appropriate degree of privacy without unreasonably blocking any views. Were the hedge to grow to such a height that did block views, then the neighbours could civilly discuss a reduction in its height. This matter does not warrant a condition and can be maintained by occupants and any changes can be agreed in a civil manner.
- Building material - exterior cladding of spa



Comment:

A submission received requests that the outer edges of the western extension (housing the spa) be clad in vertical gardens. The applicant has not elected such a cladding and there is no requirement for this cladding to be imposed. The proportions of the spa wall are not such that create an excessively dominant visual form or bulk and thus the proposed finish, being painted cladding, is acceptable. It is noted that to the northern elevation, where the subject wall is most visible, would be planted out with screen planting which would minimise views of the wall when viewed from the neighbouring properties.

- Impact on trees

Comment:

A submission received raised concerns about the development creating additional impacts on trees that are to be retained under the parent consent. Council's Landscape Officer has been consulted and raises no objections to the development subject to the retention of conditions as approved.

- Overlooking and privacy

Comment:

Privacy and overlooking is discussed later in this report.

- Spa pump / equipment and fencing

Comment:

A submission received raised concern about the potential noise generated by the spa pump/filter and queried how the spa would be enclosed by compliant fencing. The development must comply with all relevant Australian Standards including swimming pool safety and it is considered that solutions would be available to provide compliant fencing to the spa, which may be resolved prior to the issue of any Occupation Certificate. A condition is imposed in the recommendations of this report requiring all spa equipment to be housed in a suitably noise attenuated structure to ensure that it does not create unreasonable noise to neighbours.

## REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	Council's Natural Environment Unit - Biodiversity referral team has no objections to the proposed modification subject to the conditions provided for the previous DA consent (DA2018/2051).
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of</p> <ul style="list-style-type: none"> <li>* supplied plans and reports</li> <li>* the Coastal Management Act 2016,</li> <li>* State Environmental Planning Policy (Coastal Management) 2018 and</li> <li>* the Pittwater LEP 2014 and Pittwater 21 DCP.</li> </ul> <p>The site is affected by the estuarine planning level, however all works are above the level.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

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

**SEPP 55 - Remediation of Land**

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

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

A BASIX certificate has been submitted with the application (see Certificate No. 981643S\_04 dated 13 August 2021). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0006347371 dated 13 August 2021).

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

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

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

**SEPP (Coastal Management) 2018**

The modifications sought do not alter the previous conclusions reached in the Assessment Report DA2018/2051 regarding the SEPP (Coastal Management) 2018. No further assessment required.

**Pittwater Local Environmental Plan 2014**

Is the development permissible?	Zone E4 : Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with:	

aims of the LEP?	Yes
zone objectives of the LEP?	Zone E4 : Yes Zone W1 : Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5 - 10m	9.45m	No change	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	1.1m	No change	No (as approved)
Rear building line	FSBL	>FSBL	Spa 2.5m closer to rear but > FSBL	Yes
Side building line	North - 2.5m	2.5m	No change	Yes
	South - 1m	1m	No change	Yes
Building envelope	North - 3.5m	Outside envelope	One addition encroachment measuring a maximum of 1.9m in height by 3m in width	No
	South - 3.5m	Outside envelope	No change	No (as approved)
Landscaped area	60%	56.7% 61.3% with variations	Less 28.2sqm (2.8%)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
A4.15 Waterways Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
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	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D15.1 Character as viewed from a public place	Yes	Yes
D15.3 Building colours and materials	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes

#### Detailed Assessment

#### **C1.5 Visual Privacy**

The parent approval (both plans and conditions) contained a number of privacy screens and other design measures to protect the privacy of adjoining properties no. 133 and 137 Riverview Road. Condition 26 *Amendments to Approved Plans* conditioned the following relevant requirement:

*a. The privacy screen along the southern edge of the ground floor rear deck is to be amended, as follows:*

- i. the western extent of the screen is to be reduced by 1.5m and replaced with 1m high metal balustrade,*
- ii. the setback between the screen and the southern boundary is to be increased by 1.5m, and*
- iii. the roof of the lower ground floor is to be non-trafficable between the privacy screen and the southern boundary and shall not contain any other structure, including planter boxes and the like.*

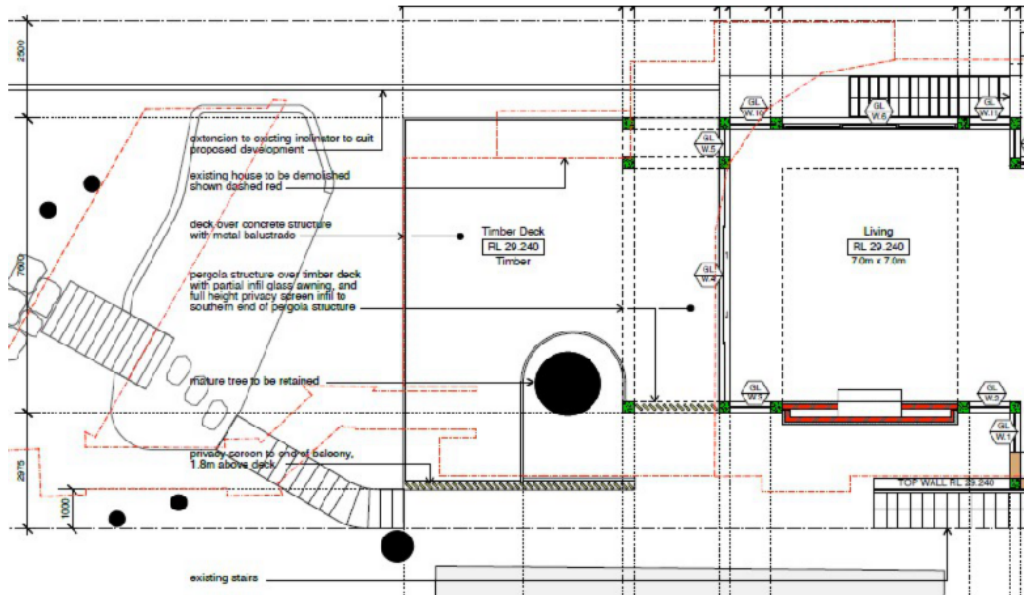
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*f. Windows W.2 and W.3 on the southern elevation of the Living Room are to comprise frosted/opaque glass.*

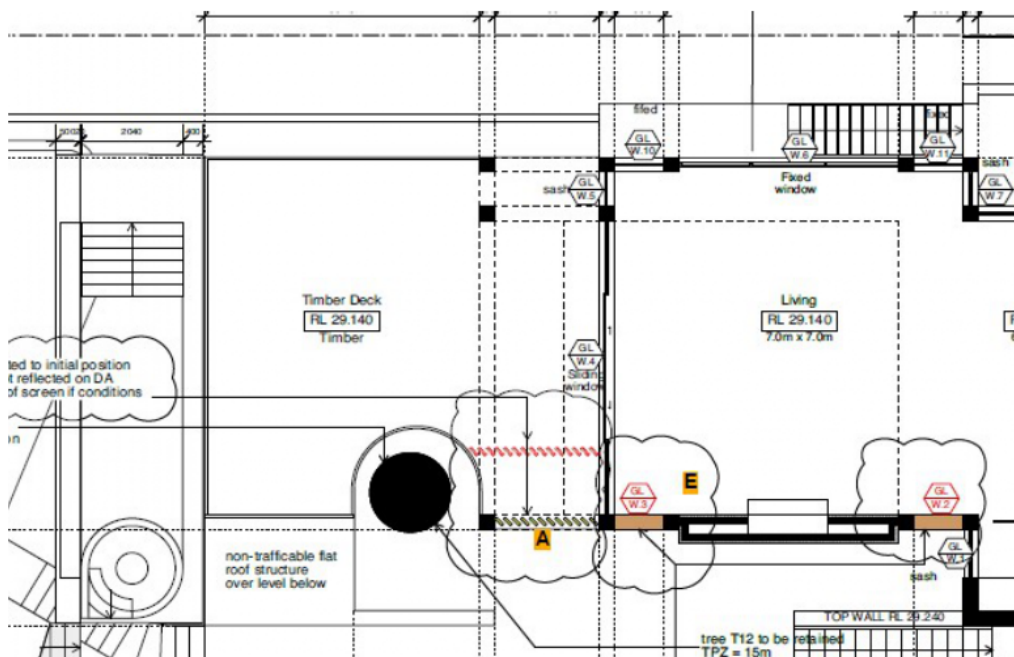
Windows W.2 and W.3 described in part (f) of Condition 26 have been deleted and thus the intent of this condition is achieved. Part (f) of the condition may be deleted as the plans resolve this.

With regards to the privacy screen it would appear that an error in the drafting of point (ii) has occurred whereby the condition relates to the entire width of the southern edge of the ground floor deck, rather than just relating to the western extent of the screen (point i). This is likely due to the fact that one set of plans that was considered (but not approved) under the parent development consent and that the condition was left on the report in error, when it should have been deleted or modified upon receipt of the revised plans.





The condition requires the privacy screen to be relocated 1.5m inward of the deck directly in front of the living room doors, and not at the outer edge of the deck. The circumstance is shown on the below diagram with the approved position shown in red, and proposed position shown in green/yellow:



Notwithstanding any of the above (whether the condition was in error or not) consideration to the merit of the proposal is required.

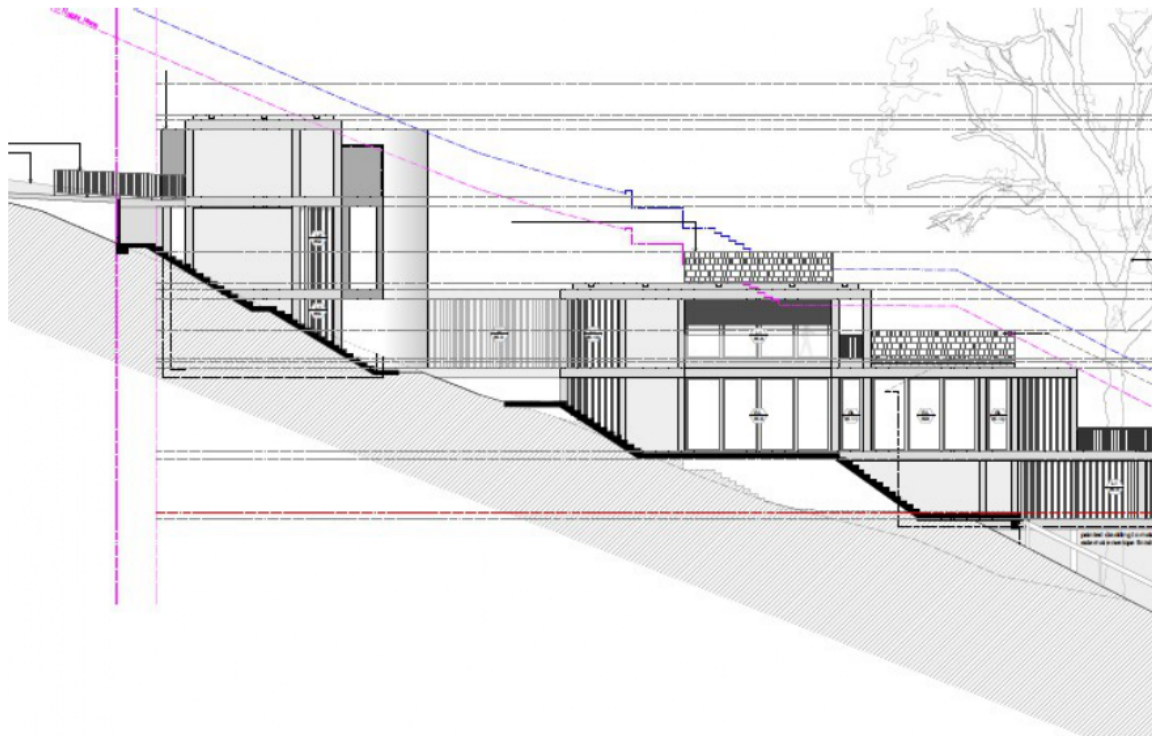
The approved arrangement does not prevent a person from entering the space between the approved screen and the outer edge of the deck as it is faced by a wall of sliding doors. This design would result in limited privacy to the neighbouring occupier and create an unusual internal living arrangement for

occupants of the house. Deleting part (a) of the condition resolves this issue and is not considered to create any loss of privacy to neighbours over and above the approved development. The relocation of the screen to the outer edge of the deck is supported.

### D1.11 Building envelope

#### Description of Non-Compliance

The northern edge of the proposed spa/terrace extension creates a non-compliance when assessed against the building envelope control. The portion of new building which encroaches the prescribed envelope is generally limited to the pool fencing/balustrade and measures 1.9m in height by 3m in width, as depicted in red on the below diagram (drawn by author over architect plans):



#### Merit Consideration:

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

- To achieve the desired future character of the Locality.*  
Comment: The non-compliance sought does not materially change the previous assessments conclusion that the proposal, as a whole, achieves the desired future character of the locality. The 3m deep addition to accommodate a spa falls below the maximum prescribed height; is a compliant distance from the northern side boundary and is at least 20m away from the waters edge. The addition does not materially change the proportions or design of the house and thus does not impact on the development's adherence to the desired future character.
- To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

Comment: The addition sought encroaching the envelope is not visible from the streetscape. The addition is lesser than the height of trees in the natural environment and does not alter the density of the building.

- *To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*  
Comment: The proposed addition seeks to utilise the approved floor level of the lower ground floor to create a level access to the spa. The design could be modified to drop the height of the spa addition, however such a change would only result in a reasonably minor difference to the developments relationship to the spatial characteristics of the existing natural environment and would serve no discernible benefit.
- *The bulk and scale of the built form is minimised.*  
Comment: The proportions of the proposed addition are considered to be minimal commensurate to the overall dwelling and thus have an acceptable bulk and scale.
- *Equitable preservation of views and vistas to and/or from public/private places.*  
Comment: The proposed addition is not found likely to result in any unreasonable view loss from public land, nor from the adjoining properties at nos. 133 and 137 Riverview Road.
- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*  
Comment: The development is not found to result in an unreasonable loss or privacy or sunlight to neighbouring properties and provides an acceptable level of internal amenity to future occupiers of the home. It is noted that the spa location may be visible in part from neighbouring properties, however a small degree of overlooking must be a reasonable expectation in a residential environment. It is not found warranted in this instance to require the erection of any additional privacy screening to the spa area for the benefit of its occupants, as such may impede on the views enjoyed from neighbouring houses.
- *Vegetation is retained and enhanced to visually reduce the built form.*  
Comment: Achieved.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of the P 21 DCP 2014 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **D1.14 Landscaped Area - Environmentally Sensitive Land**

##### Description of Non-Compliance

Clause D1.14 of the P 21 DCP requires that 60% of the total site area be landscaped. That control permits recreational areas (decks and the like) to be included within that 60% up to a maximum of 6% of the site area. The approved development achieved a landscaped ratio of 56.7%, or when taking into account the additional recreational areas, 61.3%.

This modification seeks to reduce the overall landscaped area of 28.2 square metres or 2.8%, thus bringing the total landscaped area to 53.9% or 58.5% inclusive of variations.

##### Merit Consideration

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



Outcomes of the Control as follows:

- *Achieve the desired future character of the Locality.*  
Comment: The proposed reduction of landscaped area occurs to the rear of the site to facilitate the spa extension. That portion of the building is not visible from Riverview Road, and would generally be non-discernible from the waterway commensurate to the approved development. The loss of landscaped area does not contribute to any loss of trees. On balance the 28 square metre reduction does not change the character of the development.
- *The bulk and scale of the built form is minimised.*  
Comment: The proposed addition creating the encroachment is compliant with the relevant setback controls and can be screened by landscaping on all edges. It therefore is of an appropriate bulk and scale.
- *A reasonable level of amenity and solar access is provided and maintained.*  
Comment: The shortfall in calculable landscaped area is not considered to directly contribute to any less of amenity or solar access to neighbouring properties, nor to future occupants of the development.
- *Vegetation is retained and enhanced to visually reduce the built form.*  
Comment: The proposed addition of the spa does not result in the removal of any noteworthy vegetation over and above that authorised to be removed by the parent consent. Adequate setback distances are provided around the spa to allow the growth of vegetation in longevity to screen the structure.
- *Conservation of natural vegetation and biodiversity.*  
Comment: The shortfall in landscaped area does not seek to remove any noteworthy natural features or biodiversity.
- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*  
Comment: Stormwater run-off is adequately addressed by conditions of consent in the parent report. The 28 square metre shortfall does not result in any significant further reduction.
- *To preserve and enhance the rural and bushland character of the area.*  
Comment: Achieved.
- *Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.*  
Comment: Notwithstanding the shortfall in landscaped area, the site still maintains an adequate area of soft surface to provide the infiltration of stormwater.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P 21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **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**

### **Northern Beaches Section 7.12 Contributions Plan 2021**

Section 7.12 contributions were levied on the Development Application.

## **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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

This report has sought to demonstrate that the modifications sought by the Section 4.55(2) Application do not materially change the approved development and afford the future occupants of the dwelling an enhanced level of internal amenity.

The changes sought to modify the internal footprint and layout of the building including the enlargement within below-ground void spaces are without unreasonable impact on neighbours. Modifications to windows and openings are minor and are largely reflective of conditions imposed by the parent consent.

The relocation of the spa to be outdoors does result in a building footprint increase to a depth of 3m and a portion of the balustrading does project beyond the prescribed side boundary envelope, however the impact of that non-compliance does not create any unreasonable impact either individually nor cumulatively when taken in the context of the development as a whole.

The modifications do not alter nor permit the removal of any vegetation on the site.

The modifications sought as suitably described as being substantially the same to the approved

development and are worthy of support.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0621 for Modification of Development Consent DA2018/2051 for Demolition works and the construction of a dwelling house on land at Lot 1 DP 1135396, 135 Riverview Road, AVALON BEACH, subject to the conditions printed below:

### A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

#### a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
4.55.01.01-A	02 August 2021	Burley Katon Halliday Pty Ltd
4.55.01.02-A	02 August 2021	Burley Katon Halliday Pty Ltd
4.55.01.03-A	02 August 2021	Burley Katon Halliday Pty Ltd
4.55.02.01-A	02 August 2021	Burley Katon Halliday Pty Ltd
4.55.02.02-A	02 August 2021	Burley Katon Halliday Pty Ltd
4.55.02.03-A	02 August 2021	Burley Katon Halliday Pty Ltd
4.55.3.01-A	02 August 2021	Burley Katon Halliday Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 981643S_04	13 August 2021	BASIX Certificate Centre
NatHERS Certificate No. 0006347371	13 August 2021	BASIX Certificate Centre

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

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

### B. Modify Condition 26 - Amendments to Approved Plans to read as follows:

The Approved Architectural Plans, Approved Landscape Plans and Approved Engineering Plans referenced in Condition 1 of this consent are to be amended, as follows:

#### a. All services, including stormwater trenching, are to be located outside the Structural Root Zone of

Trees 12 and 17.

- b. A 1m wide pathway/stairway is permitted along the southern boundary to connect the rear access stairs to the subfloor services area. The remainder of the southern setback is to be landscaped in accordance with the Approved Landscape Plans.
- c. the incorporation of drip irrigation around T12, in accordance with Section 9.13 of the Approved Arboricultural Impact Assessment Report referenced in Condition 1 of this consent.
- d. The elevated courtyard/BBQ area along the northern side elevation is to be setback a minimum distance of 1m from the northern boundary. A 1m solid balustrade is required along the northern elevation of the length of the courtyard.

These amendments are to be incorporated into any plans submitted to the certifying authority as part of the construction certificate application.

Reason: To minimise the environmental impact of the development.

**C. Add Condition 49A - Swimming Pool Requirements to read as follows:**

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

- (a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:
  - (i) Swimming Pools Act 1992;
  - (ii) Swimming Pools Amendment Act 2009;
  - (iii) Swimming Pools Regulation 2008
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools
- (b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.
- (c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.
- (e) Signage showing resuscitation methods and emergency contact
- (f) All signage shall be located in a prominent position within the pool area.
- (g) Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life.

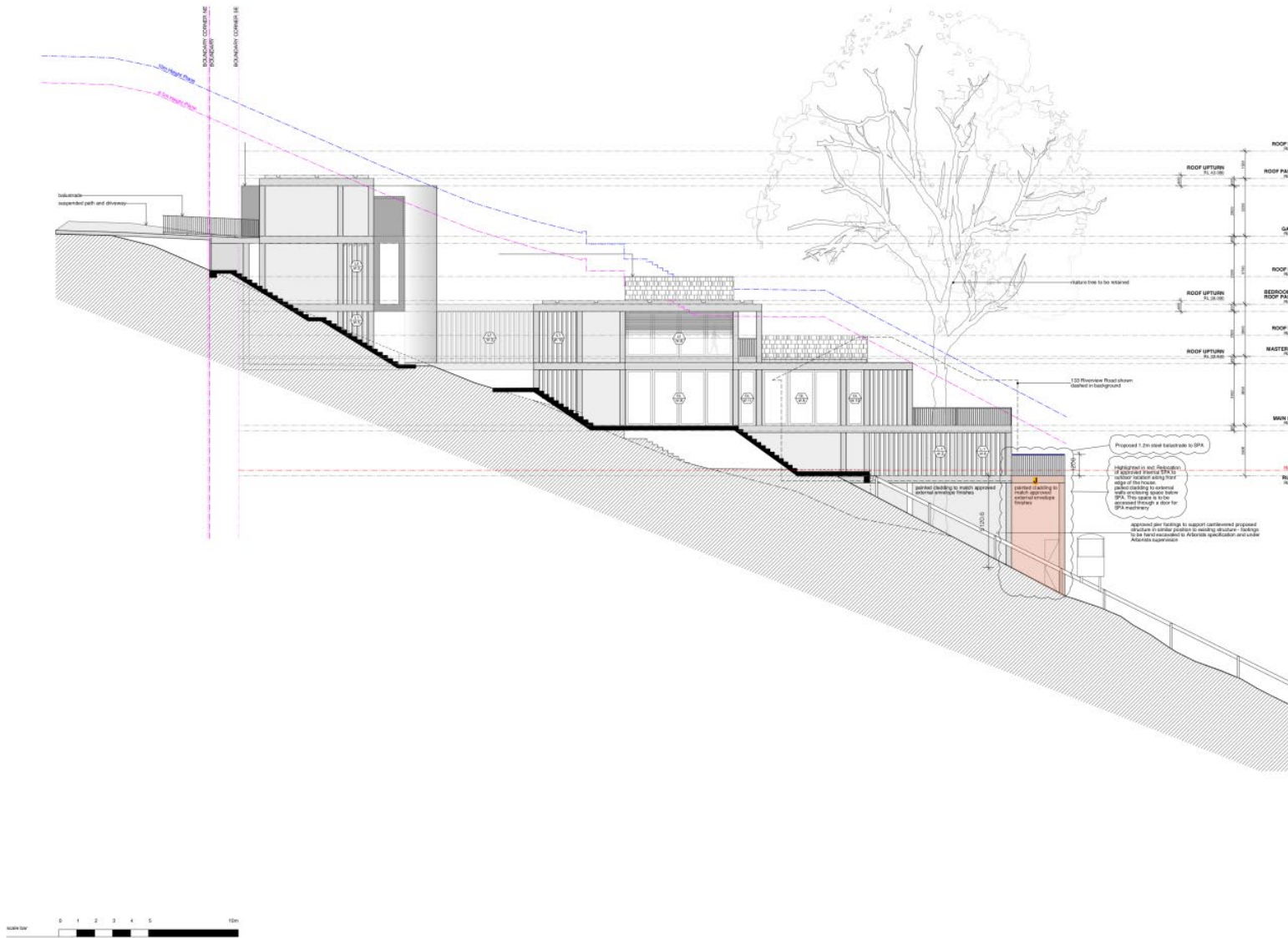
**D. Add Condition 56 - Swimming Pool / Spa Motor Noise to read as follows:**

The swimming pool/spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.







- DRAWING LEGEND**
- Proposed Masonry Structure
  - Proposed Concrete Structure
  - Proposed Steel Structure
  - Proposed Precast Block Veneer Structure
  - Proposed Lightweight Structure
  - Existing Ground - Unknown
  - Proposed soil
  - Existing Tree to be Retained
  - Existing Tree to be Removed
  - Existing Tree to be Regulated
  - Tree Protection Zone
  - Tree Encasement
  - Existing Approved Structure
  - Existing Structure to be Demolished

**DRAWING NOTES**

**SMOKE ALARM DETECTOR**  
ALL BUILDING WORKS TO BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA (BCA).  
EPL of 2.0 AED shall be applied to all development proposed below this level:

Structural elements below this level to be flood compatible.  
Structural equipment, wiring, gas lines or other service pipes and connections to be located above 0.7m AED or waterproof to this level.  
Storage of fuel or petroleum products, chemicals, or hazardous materials not permitted below 2.0m AED.  
All services, including stormwater discharges, are to be located outside the SRZ of lots 12 and 17.

**WATER COMMENTS**  
Downpipes shall be installed with a minimum of 3mm falling.  
Toilets, showers, and showers shall be installed with a minimum of 4 star rating.  
Downpipes shall be installed with a minimum of 2 star rating.  
Down pipe water treatment devices shall be installed with a minimum of 2 star rating.  
A rainwater tank shall be provided with a minimum of 4000L.  
The rainwater tank shall be installed to collect rain water from a minimum of 100 square metres of the roof area.  
The rainwater tank shall be connected to the main sewer.  
The rainwater tank shall be connected to at least one outdoor tap.

**HOT WATER**  
Solar panels installed with a performance of 21 to 25 STCS or better.

**ENERGY COMMENTS**  
ROOF SYSTEM  
In at least 1 living area 3 phase air conditioning. Energy rating 2.5.  
In at least 1 bedroom, ceiling fans - 3 phase air conditioning.  
In at least 1 living area 3 phase air conditioning. Energy rating 2.5.  
In at least 1 bedroom 3 phase air conditioning. Energy rating 2.5.  
In at least 1 living area 3 phase air conditioning. Energy rating 2.5.  
Manual operation switch on/off.  
Manual operation switch on/off.  
Manual operation switch on/off.

**VENTILATION**  
In at least 1 bedroom, individual fan, ducted to outside or roof.  
Manual operation switch on/off.  
Manual operation switch on/off.

**MECHANICAL COMMENTS**  
Mechanical ventilation to bathrooms and laundry to comply with Part 2.8.5.5 of the NCC.  
MECHANICAL VENTILATION  
In at least 1 bedroom, individual fan, ducted to outside or roof.  
Manual operation switch on/off.  
Manual operation switch on/off.

**OTHER COMMENTS**  
The kitchen shall be fitted with a gas cooktop and an electric oven.  
**MEASURES**  
All thermal performance specifications set out in the Approval Certificate and all aspects of the proposed development which will contribute to sustainable those specifications.  
**WINDING**  
All windows to comply with Part 2.8.5.5 of the NCC.  
Provision of operable windows Part 2.8.5.5.1

A 4.55 Application to Council 02.08.2021

**AMENDMENTS**

**bkh**

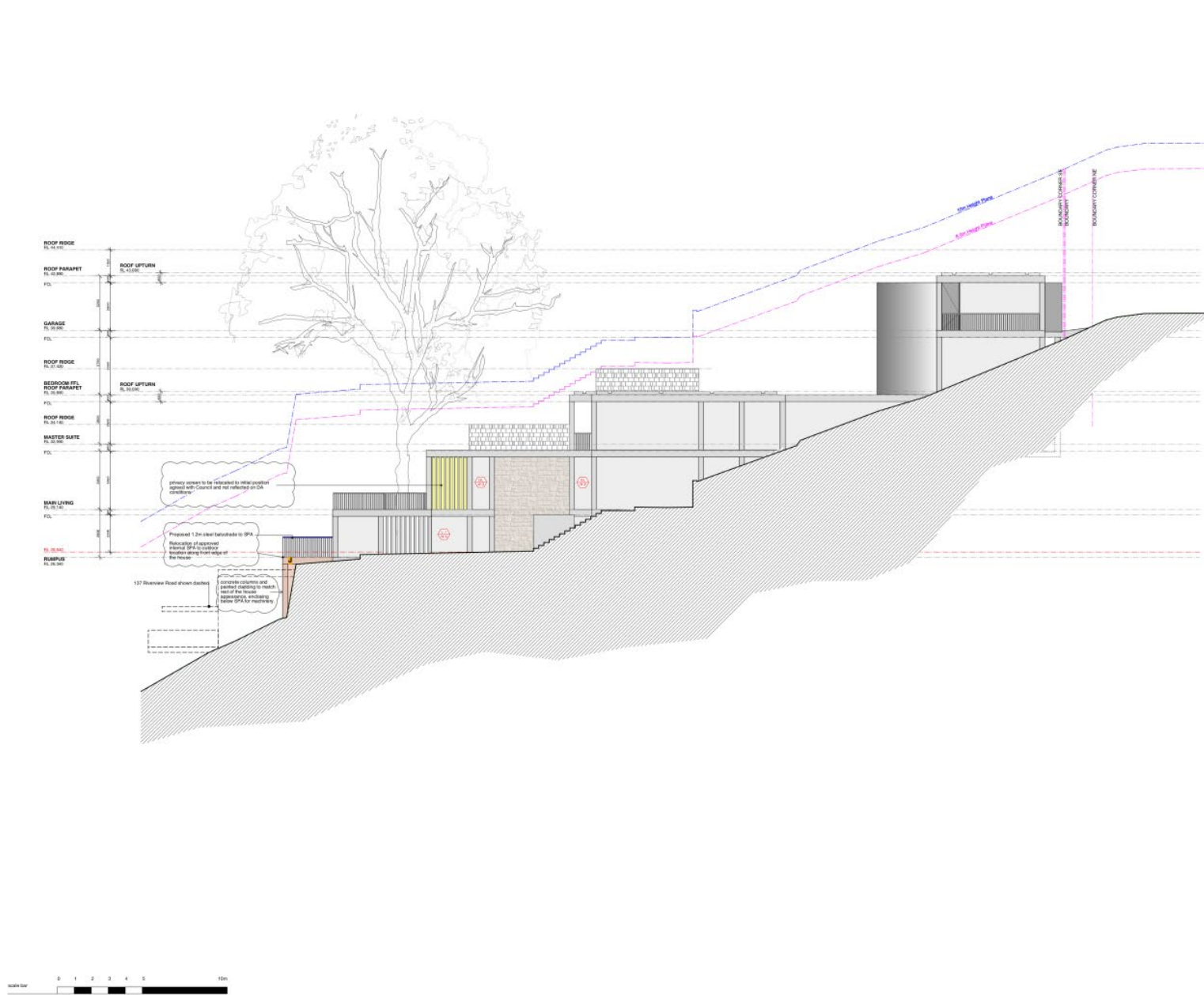
Business  
1/100 Main Street, North Brisbane  
Phone: 07 3251 1111  
Fax: 07 3251 1112  
Email: info@bkh.com.au  
Website: www.bkh.com.au

Architect  
1/100 Main Street, North Brisbane  
Phone: 07 3251 1111  
Fax: 07 3251 1112  
Email: info@bkh.com.au  
Website: www.bkh.com.au

139 HAVENVIEW ROAD  
Avalon QLD 4216

**DEVELOPMENT APPLICATION**  
ELEVATIONS  
PROPOSED NORTH ELEVATION

Scale: 1:100  
Date: 02.08.2021  
Drawing No: 2490  
Revision: 4.55.02.01-A



- DRAWING LEGEND**
- Proposed Masonry Structure
  - Proposed Concrete Structure
  - Proposed Steel Structure
  - Proposed Precast Block Veneer Structure
  - Proposed Lightweight Structure
  - Existing Ground - Unknown
  - Proposed Soil
  - Existing Tree to be Retained
  - Existing Tree to be Removed
  - Existing Tree to be Regulated
  - Tree Protection Zone
  - Tree Encasement
  - Existing Approved Structure
  - Existing Structure to be Demolished

**DRAWING NOTES**

**17 SMOKE ALARM DETECTOR**  
ALL BUILDING WORKS TO BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA (BCA).  
EPL of 2.7m AFD shall be applied to all development proposed below this level.

Structural elements below this level to be foot compliant.  
Structural equipment, ceiling, floor, floor or other service pipes and conduits to be located above 2.7m AFD or suspended to this level.  
Storage of tools or building goods, materials or hazardous materials not permitted below 2.7m AFD.  
All services, including above-ground cabling, are to be located outside the STZ of levels 12 and 17.

**WATER COMMENTS**

**RAIN WATER**  
Downpipes shall be installed with a minimum of 3mm rain pipe.  
Downpipes shall be installed with a minimum of 4mm rain pipe.  
Down pipes shall be installed with a minimum of 4mm rain pipe.  
A rainwater tank shall be provided with a minimum of 4000L.  
The rainwater tank shall be installed to collect rain water from the roof area.  
The rainwater tank shall be connected to the main sewer.  
The rainwater tank shall be installed to collect rain water from the roof area.

**ENERGY COMMENTS**

**COOLING SYSTEMS**  
In at least 1 living area 3 phase air conditioning. Energy rating 3.5+.  
In at least 1 bedroom ceiling fans - 3 phase air conditioning.  
In at least 1 living area 3 phase air conditioning. Energy rating 3.5+.  
In at least 1 bedroom 3 phase air conditioning. Energy rating 3.5+.  
Manual operation switch on/off.  
Manual operation switch on/off.

**VENTILATION**  
Manual operation switch on/off.  
Manual operation switch on/off.

**MECHANICAL VENTILATION**  
Mechanical ventilation for bathrooms and laundry to comply with Part 2.8.5.3 of the NCC.

**MATERIALS, LIGHTING**  
In at least 1 living area 3 phase air conditioning. Energy rating 3.5+.  
A photovoltaic system shall be installed with the capacity to generate at least 2.4 peak kilowatts of electricity. AEC connect.  
The system shall be installed with a gas on/off and an electric meter.

**WINDING**  
All windows to comply with Part 2.8.5.3 of the NCC.  
Provision of operable windows. Part 2.8.5.3 of the NCC.

A 4.00 Application to Council 02.08.2021

**AMENDMENTS**

**bkh**

Rev	Issue	Date	By
1	Issue for Council	02.08.2021	JO

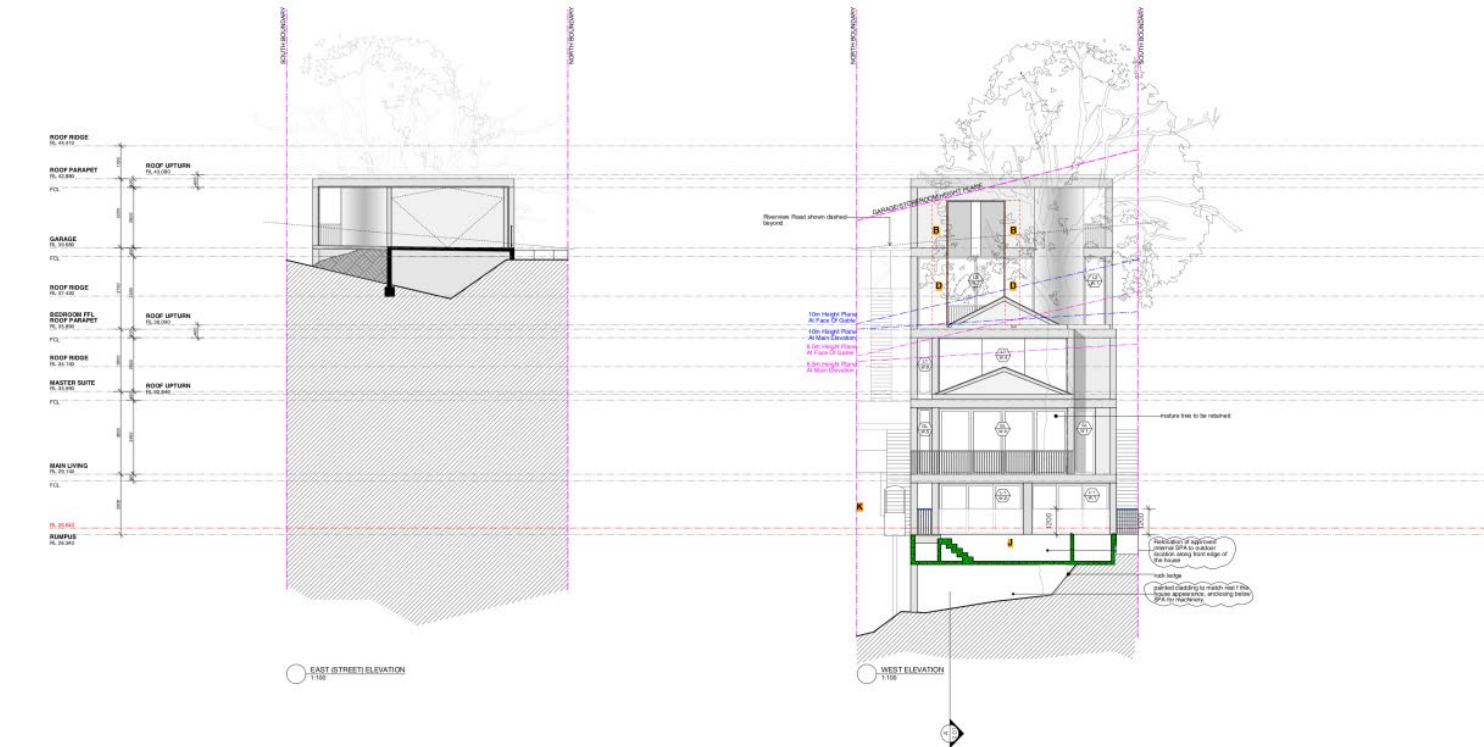
**137 RIVERVIEW ROAD**  
Avalon Beach

**DEVELOPMENT APPLICATION**

**ELEVATIONS**  
**PROPOSED SOUTH ELEVATION**

Scale: 1:100  
Date: 02.08.2021  
Drawing No: 2490  
Project No: 4.55.02.02-A





- DRAWING LEGEND**
- █ Proposed Masonry Structure
  - █ Proposed Concrete Structure
  - █ Proposed Steel Structure
  - █ Proposed Precast Block Veneer Structure
  - █ Proposed Lightweight Structure
  - █ Existing Ground - Unknown
  - █ Proposed Soil
  - Existing Tree to be Retained
  - Existing Tree to be Retained
  - Existing Tree to be Retained
  - Tree Protection Zone
  - Tree Encasement
  - Existing Approved Structure
  - Existing Structure to be Demolished

**DRAWING NOTES**

**SMOKE ALARM DETECTOR**  
ALL BUILDING WORKS TO BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA (BCA).  
EPL of 2.0 AFD shall be applied to all development proposed below this level:

Structural elements below this level to be foot compliant.  
Structural equipment, wiring, gas lines or other services pipes and connections to be located above 2.7m AFD or suspended to the level.  
Storage of fuel or petroleum products, chemicals, or hazardous materials not permitted below 2.7m AFD.  
All services, including above-ground servicing, are to be located outside the STZ of lots 12 and 17.

**WATER COMMITMENTS**  
**RAINWATER**  
Proposed works shall be installed with a minimum of 3 star rating. Toilet systems shall be installed with a minimum of 4 star rating. Appliances that be installed with a minimum of 3 star rating. Drain taps within roof-houses shall be installed with a minimum of 3 star rating.  
A rainwater tank shall be provided with a minimum of 4000L. The rainwater tank shall be installed to collect rain water from the catchment area to be connected to full laundry. The rainwater tank shall be connected to at least one outdoor tap.

**HOT WATER**  
Solar Panels installed with a performance of 21 to 25 STCS or better.  
**ENERGY COMMITMENTS**  
**COOLING SYSTEMS**  
In at least 1 living area 3 phase air conditioning. Energy rating 2.5 - 3.0.  
In at least 1 bedroom ceiling fans - 3 phase air conditioning.  
**HEATING SYSTEMS**  
In at least 1 living area 3 phase air conditioning. Energy rating 2.5 - 3.0.  
In at least 1 bedroom 3 phase air conditioning. Energy rating 2.5 - 3.0.  
**VENTILATION**  
Manual operation switch on/off.  
Manual operation switch on/off.  
Manual operation switch on/off.

Mechanical ventilation: bathrooms and laundry to comply with Part 2.8.5.5 of the NCC.  
**NATURAL LIGHTING**  
In bedrooms and bathrooms.  
A photovoltaic system shall be installed with the capacity to generate at least 2.4 peak kilowatts of electricity. AEC connect.  
**OTHER COMMITMENTS**  
The lot area shall be free with a gas ending and an electric oven.  
**WATER-SENSITIVE**  
All thermal performance specifications set out in the Absorption Certificate and all aspects of the proposed development which will contribute to calculate those specifications.  
**WINDSCREENS**  
All windows to comply with Part 2.8.5.5 (a) of the NCC.  
Provision of operable windows. Part 2.8.5.5 (a) of the NCC.



A 4.50 Application to Council 02/08/2021



139 HAVERVIEW ROAD  
Agood/BBKH

DEVELOPMENT APPLICATION

ELEVATIONS  
PROPOSED EAST AND WEST ELEVATION  
AND SECTION B-B

Scale: 1:100  
Date: 02/08/2021  
Project No: 2499  
Drawing No: 4.55.02.03-A



## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0221
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<b>Responsible Officer:</b>	Kent Bull
<b>Land to be developed (Address):</b>	Lot A DP 342891, 20 Palm Beach Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Modification of Development Consent DA2020/0214 granted for alterations and additions to a dwelling house
<b>Zoning:</b>	E4 Environmental Living
<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>	Paul Joseph Meehan
<b>Applicant:</b>	Nanna Margrethe Lesiuk

<b>Application Lodged:</b>	06/05/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	13/05/2021 to 27/05/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 14.35%
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

The modification application is sought under Section 4.55(2) is to a development consent (DA2020/0214) that was previously determined by then Development Determination Panel. As such, the modification application is referred to the Development Determination Panel for determination.

### PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify Development Consent No. DA2020/0214 granted for alterations and additions to a dwelling house.

The modification application seeks approval for the following changes:

- New skillion roof to link the approved upper floor to the existing;
- External modifications including stairs, balustrade, retaining wall, formalisation of north facing patio area;
- Retention of lawn area on the eastern side of the dwelling;
- Removal of previously approved pool and spa.

#### Ground Floor

- Internal reconfiguration to remove the eastern-most bedroom 2, relocate stairs to the southern side of the dwelling

#### First Floor

- Internal reconfiguration for an open-plan living area, removal of the western bathroom for a new entry, relocate main internal stairs and propose new internal stairs to the second floor study loft

#### Second Floor

- Internal reconfiguration to include a recessed terrace and bedroom in an area previously approved as a study, provision of an ensuite to the main bedroom, relocation of the internal stairs, storage room above the garage and a study loft within the northern-most roof void area.

### ASSESSMENT INTRODUCTION

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

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

### SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings  
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality

Pittwater 21 Development Control Plan - C1.4 Solar Access  
 Pittwater 21 Development Control Plan - C1.23 Eaves  
 Pittwater 21 Development Control Plan - D12.5 Front building line  
 Pittwater 21 Development Control Plan - D12.6 Side and rear building line  
 Pittwater 21 Development Control Plan - D12.8 Building envelope  
 Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot A DP 342891 , 20 Palm Beach Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The subject site is known as 20 Palm Beach Road, Palm Beach and is legally referred to as Lot A DP 34291. The site consists of one (1) allotment located on the eastern side of Palm Beach Road.</p> <p>The site is irregular in shape with a frontage of 20.7m along Palm Beach Road and a depth of 31.5m. The site has a surveyed area of 524.8m<sup>2</sup>. Pedestrian and vehicular access is gained via the Palm Beach Road frontage.</p> <p>The site is located within the E4 Environmental Living zone and accomodates a two (2) to three (3) storey dwelling house.</p> <p>The slope of the site is 22.3%, falling 7m from the road frontage to the rear boundary.</p> <p>The site constains a modified landscape setting, with vegetation consisting of low-lying shrubs, a sloping lawn area to the rear, palms as well as number of native canopy trees including Tuckeroos.</p> <p>The site is mapped within the Pittwater Geotechnical Hazard Map.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by dwelling houses of varying architectural styles and age within landscaped settings.</p>

Map:





## **SITE HISTORY**

### 16 June 2008

Development Application No. N0690/07 for the demolition of existing dwelling and construction of a new two storey timber and brick dwelling with a vaulted copper roof was refused by Council's Development Unit.

The Development Application has been refused for the following reasons:

1. Non-compliance with controls and outcomes of Section D12.5 – front building line of Pittwater 21 DCP.
2. Non-compliance with the controls and outcomes of Section D12.6 – side and rear building line of Pittwater DCP with respect to the southern side setback.

### 1 September 2008

A review of Council's determination to Development Application No. N0690/07 under Section 82A of the Environmental Planning and Assessment Act 1979 resulted in the granting of consent.

### 9 September 2010

Section 96(1A) Modification Application No. N0690/07/S96/1 to Development Application No. N0690/07 was granted consent.

### 5 September 2019

Development Application No. DA2019/0827 for alterations and additions to a dwelling house including swimming pool and spa was granted consent.

### 11 June 2020

Development Application No. DA2020/0214 for alterations and additions to a dwelling house was granted consent under the delegation of Council's Development Determination Panel.

## **APPLICATION HISTORY**

### 20 July 2021

Public domain site inspection undertaken by the assessing officer due to restrictions in place during the COVID-19 Pandemic. The Council notification sign was in place at the time of the inspection.

### 28 July 2021

Letter issued by the assessing officer detailing that the application in its current form was unable to be supported due to the following reasons:

1. The modified development is not substantially the same as that which was originally approved; and
2. Front boundary wall/fence
3. Geotechnical issues

### 10 August 2021

Email correspondence from the Applicant to the assessing officer providing revised plans and a geotechnical addendum letter. These documents were later registered through the NSW Planning Portal on 17 August 2021.

### 10 August - 26 August 2021

Various phone correspondence between the Applicant and the assessing officer concerning the revised plans received.

### 31 August 2021

Revised plans (dated: 10/8/21) were provided to Robert Wilcher (via email) who previously made a submission on behalf of the property owners of No. 16 Palm Beach Road.

### 31 August 2021 - 7 September 2021

Various email correspondence between the assessing officer and the Applicant highlighting inconsistencies with the solar access diagrams provided.

### 8 September 2021

Revised Solar Access diagrams (dated: 8/9/21) submitted by the Applicant to the assessing officer (via email) that were subsequently certified by the architect on 9 September 2021.

### 9 September 2021

Revised Solar Access diagrams (dated: 8/9/21) were provided to Robert Wilcher (via email) who previously made a submission on behalf of the property owners of No. 16 Palm Beach Road.

## **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA#####, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/0214 for the following reasons:</p> <p>Whilst the proposed changes result in an increase to the overall building height with the new skillion roof link at the upper floor, it is acknowledged that this modification is to increase the functional area (head height/clearances) that would be otherwise restricted by the previously approved vaulted roof form. Despite this change resulting in a further 100mm breach to approved height, consideration has been given that no unreasonable amenity impacts such as to views or visual privacy would arise as a result of the proposed modifications. It is accepted that the modifications do result in increased solar access impacts to the southern adjoining property at No. 16 Palm Beach Road. However, the extent of these solar impacts are limited and considered acceptable (Refer to Clause C1.4 Solar Access of the P21 DCP for further discussion). It should also noted that the site falls approximately 7m from the road frontage to the rear boundary, with the greatest extent of this fall being in the vicinity of the existing building footprint. Being on a sloping site, the dwelling house will continue to appear as 2 storeys (being a garage and floor level above) from Palm Beach Road frontage, from the rear, it will appear to be a 2-3 storey development. The remaining changes being largely internal reconfiguration works to the dwelling are not considered to result in any further unreasonable impacts. The proposal also seeks the removal of a previously approved swimming pool, which can assist with providing opportunities for improved landscaped amenity of the site. In this regard, the modifications are considered to be of minor environmental impact. The Consent Authority can therefore be satisfied that the development as modified will be "essentially or materially" substantially the same as the approved development.</p>



Section 4.55 (2) - Other Modifications	Comments
<p>(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and</p>	<p>Development Application DA2020/0214 did not require concurrence from the relevant Minister, public authority or approval body.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p>
<p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into

consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application/This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested, however in response to issues raised by Council, amended plans were submitted to reduce the overall height of the proposal.</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 in the original 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 in the original 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</p>

Section 4.15 'Matters for Consideration'	Comments
	Australia (BCA). This matter has been addressed via a condition in the original consent.
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.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 13/05/2021 to 27/05/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Stemlet Pty Ltd	PO Box 3856 MOSMAN NSW 2088
Hicksons Lawyers	DX 309 Sydney NSW

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

- **The proposal not being “substantially the same development”**

Comment:

The submissions raised concern the proposed works are not substantially the same as those already approved under DA2020/0214. The assessment has found that despite the increase to the overall building height with the new skillion roof link, that the Consent Authority can be satisfied that the development as modified will be "essentially or materially" substantially the same as the approved development. Refer to further discussion under Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 of this report.

- **Inconsistent with the “public interest”**

Comment:

The submissions raised concern that the proposal is inconsistent with the public interest. The assessment of a development's merits requires consideration of the public interest under section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979. In this regard, the assessment has found that the proposal achieves the relevant aims of the PLEP, objectives of the E4 Environmental Living zone and therefore that there are no matters that would justify the refusal of the application in the public interest.

- **Building Height non-compliance from the proposed skillion roof**

Comment:

Concern was raised in the submissions with regards to the building height non-compliance arising from the proposed skillion roof. The modification application seeks a proposed building height of 10.37m (RL 34.30), which results in a 100mm increase to the height approved under Development Consent. DA2020/0214 (RL 34.20). It was also raised that no written justification (Clause 4.6) was submitted to Council with the modification application. In this regard, it should be noted that Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Despite the non-compliance, the assessment has found that the modified development satisfied the underlying of Clause 4.3 Height of Buildings under the PLEP 2014 and should be supported. Refer to further discussion under Clause 4.1 Height of buildings of the PLEP 2014.

- **Building Envelope non-compliance**

Comment:

Concern was raised with the building envelope non-compliance along the southern elevation of the proposed development. Whilst the building envelope breach is largely to the partially vaulted roof form, acknowledgement is given that the roof form (Second Floor) contains habitable rooms. On this basis, the extent of the building envelope breach increases from 3.2m to 3.3m when measured to the uppermost ridge of the skillion roof. Despite the non-compliance, consideration has been given that the breach should be supported on merit. Refer to further discussion under Clause D12.8 Building envelope of the P21 DCP.

- **Landscaped Area non-compliance**

Comment:

Concern was raised with regards to the landscaped area non-compliance arising from the proposed development. An assessment in this regard demonstrated that the modifications result in an overall increase in the resultant landscaped area on site to 43% (226.2sqm) from 36% as

approved under Development Consent No. DA2020/0214. Refer to further discussion under Clause D12.10 Landscaped Area – Environmentally Sensitive Land of the P21 DCP of this report.

- **Overshadowing impacts**

Comment:

Overshadowing concerns were raised in the submissions made by Robert Wilcher on behalf of the property owners of No. 16 Palm Beach Road. The solar access diagrams submitted, demonstrate that a minimum of 3 hours of sunlight between 9am and 3pm on June 21st will be maintained to the main private open space area and the habitable windows of No. 16 Palm Beach Road. Refer to further discussion under Clause C1.4 Solar Access of the P21 DCP of this report.

**REFERRALS**

Internal Referral Body	Comments
<p>NECC (Development Engineering)</p>	<p><b>16/06/2021:</b> 1) There is proposal of new fence to front boundary in the public road reserve, refer Item 15 on the drawing No. MOD.08, Dated 13/4/2021 by Housed Architects. It is noted that at present there is a retaining wall supporting the road embankment and the proposal is unclear that whether this wall will be removed/replaced. And also there are no details of proposed fence. Applicant is advised to provide details of the proposed fence.</p> <p>2) The letter by Ascent Geotechnical Consulting, Dated 8th April 2021, mentioned about the updated architectural drawings dated 10th March 2021 while the Master set plans are dated 13/4/2021. Geotechnical Engineer to be provided with latest drawings dated 13/04/201 to assess and update the Geotechnical Report (if required)</p> <p><b>13/09/02021:</b> In the revised plans dated 10/8/2021, the front fence, and any works to the road reserve have been deleted.</p> <p>A letter from Ascent Geotechnical Consulting, ref AG 19104B – 09 August 202 is provided and as per the letter, the changes to the design do not require any material modifications to the recommendations presented in Table 3 of their original report (AG 19104, dated 1 July 2019).</p> <p>No objections are raised to the proposed modification. No modification to Development Engineering conditions required. Existing Development Engineering conditions for DA2020/0214 are considered to still be relevant and adequate.</p>
External Referral Body	Comments



External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that "Decision Not Required". Therefore, it is assumed that no objections are raised and no conditions are recommended.

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

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

#### SEPP 55 - Remediation of Land

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

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

A BASIX certificate has been submitted with the application (see Certificate No. A412802, dated 13 April 2021).

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 who provided a response stating that "Decision Not Required". 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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.27m (RL 34.20)	10.37m (RL 34.30)	14.35% (1.22m)	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

**4.3 Height of buildings**

In *Gann v Sutherland Shire Council [2008] NSWLEC 157*, the Court was prepared to distinguish an earlier line of authority, and hold that, since Section 4.55 was a "free-standing" provision, it could be utilised to modify a consent even where (in that case) no SEPP 1 or Clause 4.6 Objection could be lodged.

By application of that case in the context of this application, the Council can consider (and approve) a modification that still results in a breach of the height of buildings development standard, without reference to SEPP 1 or Clause 4.6, relying instead on the "free-standing" power of Section 4.55.

In this regard, the matters for consideration under SEPP 1 or Clause 4.6 provide a reasonable and consistent means of assessing any Section 4.55 that is beyond the provisions of the planning controls.

Whilst this modification application will result in a building height greater than that permitted by Clause 4.3 of the PLEP 2014, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the EP&A Act, which is a free-standing provision which in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation objection in order to determine the modification.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Notwithstanding that Clause 4.6 does not apply to modification applications, the merits of the departure has been assessed and found that the development satisfies the underlying objectives of Clause 4.3 Height of Buildings under the PLEP 2014 and the variation can be supported.

The modification application seeks a proposed building height of 10.37m (RL 34.30), which results in a 100mm increase to the height approved under Development Consent. DA2020/0214 (RL 34.20). The modified development results in an overall breach to the development standard by 1.22m (14.35%).

The change to the overall buildig height is largely resulting from the modification of the "linking" roof form between the vaulted roofs of the existing dwelling. The skillion roof form is proposed to increase the functional area (head heights/clearances), while also providing opportunities to increase access to sunlight to the internal areas and improving the outlook from the second floor. Whilst the bulk, scale and roof form of the modified structure is considered as acceptable, the resultant development is expected to reduce the extent of solar access to No. 16 Palm Beach Road. The requirement for a survey certificate (Condition 11) is to remain in place to ensure that at completion the roofing is in accordance with the modified plans. In this regard, Council can be satisfied that the modified development is substantially the same development as previously approved and therefore no assessment against the objectives of Clause 4.6 is required and the departure from the development standard is supported in this instance.

### Pittwater 21 Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	13.6m	1m - Existing (reconfigured entry to first floor)	No, but within existing building footprint
Rear building line	6.5m	10m	unaltered (deletion of swimming pool)	Yes
Side building line	2.5m	9m (North)	1.75m - Existing (study loft within existing roof void) 4.8m - Existing (terrace within existing structure - second floor)	No, but within existing building footprint
	1m	2.4m (South)	unaltered	Yes
Building	3.5m	Within Envelope (North)	unaltered	Yes

envelope	3.5m	Outside Envelope by 800mm to underside of eave, 3.2m to roof ridge (South)	Outside Envelope by 800mm to underside of eave (unchanged), <b>3.3m</b> to roof ridge (South)	<b>No</b>
Landscaped area	60%	36%	43% (226.2m <sup>2</sup> ) (accounting for deletion of swimming pool)	No, but increase to overall landscaped area

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	No	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

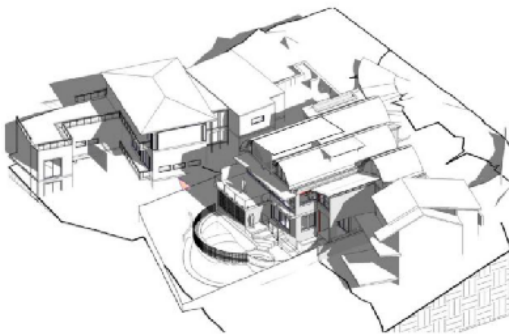
#### Detailed Assessment

#### **A4.12 Palm Beach Locality**

The desired character of the Palm Beach Locality is for dwelling houses to be a maximum of two storeys in any one place. While the proposal will maintain the a two (2) storey presentation to the Palm Beach Road frontage, the modification may result in the dwelling appearing as three (3) storeys when viewed from the rear. It should be noted that the Ground Floor is partially below ground level (existing) and is largely not discernible when viewed from the road frontage or neighbouring properties. The second floor also appears to be contained within a roof form rather than by conventional side walls. For the avoidance of doubt, the proposal is considered to still achieve consistency with the 'Desired Character' and is supported on merit.

#### **C1.4 Solar Access**

The proposed skillion roof will result in overshadowing towards No. 16 Palm Beach Road, Palm Beach. It is however noted that the solar access diagrams submitted with the application demonstrate that a minimum of 3 hours of sunlight between 9am and 3pm on June 21st will be maintained to the main private open space area and the habitable room windows of No. 16 Palm Beach Road. In particular, areas such as central courtyard, swimming pool and rear garden areas will continue to achieve the minimum solar access as required under this clause.



*Figure 1. 3D elevation solar access diagram depicting the extent of shadowing by the modification in orange at 12pm on 21 June (Source: Nanna Lesiuk).*



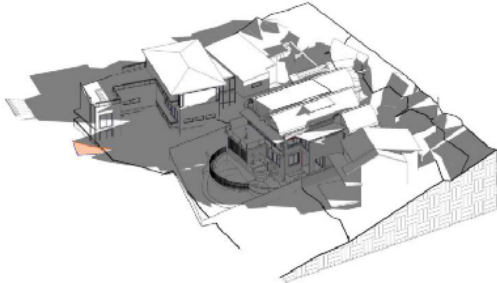


Figure 2. 3D elevation solar access diagram depicting the extent of shadowing by the modification in orange at 3pm on 21 June (Source: Nanna Lesiuk).

### **C1.23 Eaves**

The modified skillion roof does not incorporate eaves of 450mm minimum width in all elevations. Despite this non-compliance, consideration has been given that the roof form will continue to reflect the coastal character of Palm Beach. The BASIX information submitted also demonstrates that appropriate solar access and shading will be achieved.

### **D12.5 Front building line**

A portion of the proposed modified works technically fall within the 6.5m front setback. The works are within the front setback relate to the 'study loft' and minor changes such as the new entry archway on the First Floor. It should be noted however these changes are located entirely within the existing built form and therefore result in any further breach towards the front boundary. The proposed development is considered to comply with the outcomes of this clause and is supported on merit.

### **D12.6 Side and rear building line**

As highlighted earlier in this report, the 'study loft' is located entirely within the roof void. Whilst the 'study loft' is setback 1.75m and therefore non-compliant with the 2.5m northern side setback requirement, consideration has been given that there will be no real discernable changes to this exterior when viewed No. 22 Palm Beach Road. The proposed modification is therefore considered to meet the outcomes of this clause and is supported on merit.

### **D12.8 Building envelope**

The proposed skillion roof modification is not within the prescribed southern building envelope and is therefore non-compliant with the control requirement. Despite the control permitting roof eaves extending outside the building envelope, in acknowledgement that the roof area is for a habitable room. The proposed modification has been considered to breach the building by 3.3m (increase of 100mm from approved) when measured from the roof ridge. When measured from the underside of the eave along the southern elevation, the breach remains unchanged. While the non-compliance is applicable for approximately the eastern half of the dwelling house and is reduced to compliance at the front portion of the dwelling facing Palm Beach Road. The variation sought for the proposed development do not result in an unreasonable impact to neighbouring properties with regard to views, privacy and solar access. Furthermore, the proposal is seen to be consistent with the desire character of the locality. Visual impacts on the streetscape are limited when viewed from the Palm Beach Road frontage, due to the sloping topography of the site. The retention of canopy trees, palms and vegetation along the setback areas further limit the built form of the proposed development.

Based on the above, the variation to the control is supported on merit and considered to satisfy the

outcomes of the control.

### **D12.10 Landscaped Area - Environmentally Sensitive Land**

The proposed modification results in an overall increase to the resultant landscaped area on site to 43% (226.2m<sup>2</sup>) from 36% as approved under Development Consent No. DA2020/0214. However it is noted that the modification seeks the deletion of the approved but yet to be constructed swimming pool reduce the extent of non-compliance. Whilst the approved swimming pool was technically indicated on the stamped plans for Development Consent No. DA2020/0214, the pool was in fact approved under a previous Development Consent No. DA2019/0827. For the avoidance of doubt, a condition has been recommended for the surrender of Development Consent No. DA2019/0827 under Section 4.63 of the Environmental Planning and Assessment Act 1979. The surrender of Development Consent No. DA2019/0827 will ensure that an acceptable level of landscaped area continues to be provided on site.

Subject to compliance with this condition, the variation to the control is supported on merit and considered to satisfy the outcomes of the control.

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

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2021**

Section 7.12 contributions were levied on the Development Application.

### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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 approval to Modification Application No. Mod2021/0221 for Modification of Development Consent DA2020/0214 granted for alterations and additions to a dwelling house on land at Lot A DP 342891,20 Palm Beach Road, PALM BEACH, subject to the conditions printed below:

#### A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

##### a) Modification Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
MOD.06 (Proposed Site Plan)	10/8/21	Housed By Nanna Lesiuk
MOD.07 (Modified Ground Floor Plan)	10/8/21	Housed By Nanna Lesiuk
MOD.08 (Modified First Floor Plan)	10/8/21	Housed By Nanna Lesiuk
MOD.09 (Modified Second Floor Plan)	10/8/21	Housed By Nanna Lesiuk
MOD.12 (Modified Roof Plan)	10/8/21	Housed By Nanna Lesiuk
MOD. 13 (Modified West Elevations)	10/8/21	Housed By Nanna Lesiuk
MOD.14 (Modified East Elevations)	10/8/21	Housed By Nanna Lesiuk
MOD.15 (Modified North Elevations)	10/8/21	Housed By Nanna Lesiuk
MOD.16 (Modified South Elevations)	10/8/21	Housed By Nanna Lesiuk
MOD.17 (Modified Sections)	10/8/21	Housed By Nanna Lesiuk
MOD.24 (Modified Sections 2)	10/8/21	Housed By Nanna Lesiuk

<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>

BASIX Certificate, Ref. A412802	13 April 2021	GRS Building Reports
Geotechnical Review Letter, Ref. AG 19104B	9 August 2021	Ascent Geotechnical Consulting

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

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

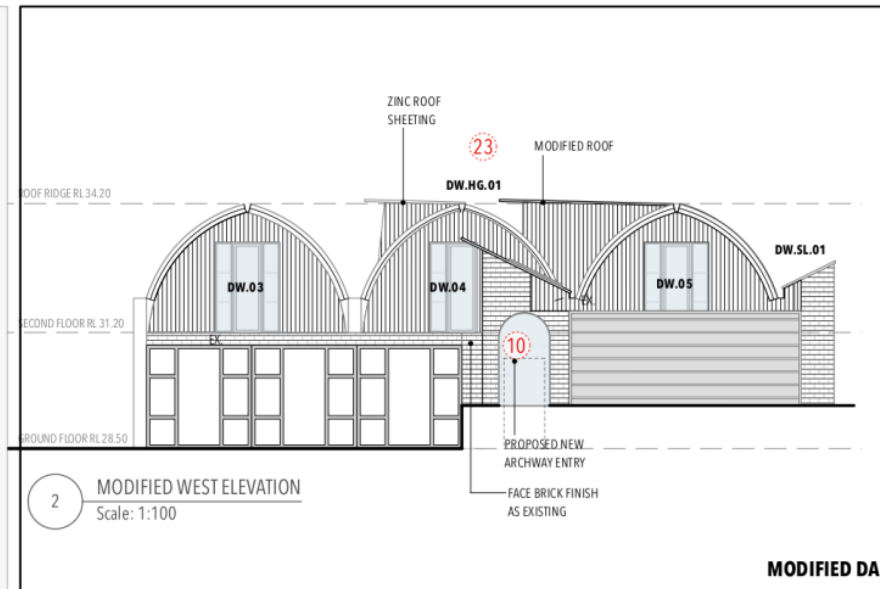
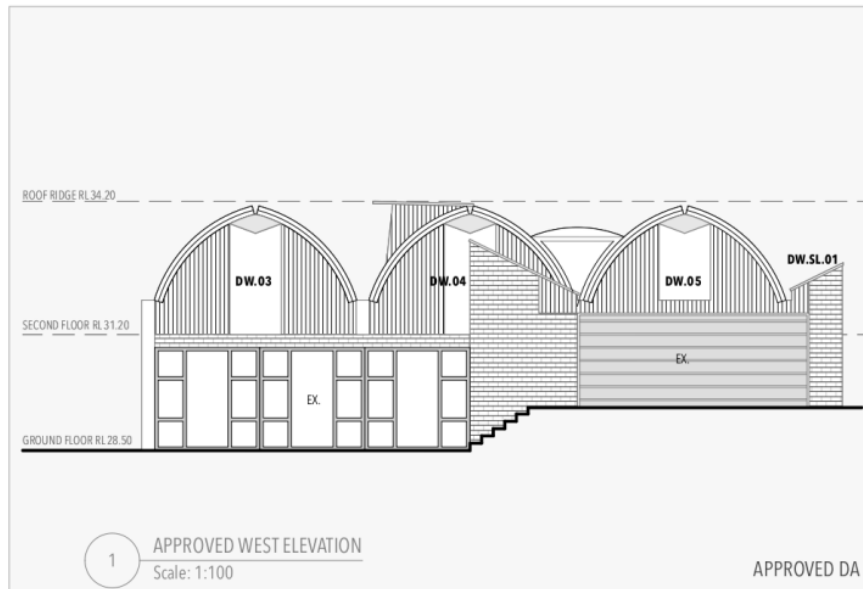
**B. Add Condition 8A 'Surrender of Development Consent No. DA2019/0827' to read as follows:**

Prior to the issue of any Construction Certificate, Development Consent No. DA2019/0827 is to be surrendered to Council.

Reason: To ensure consistency with this consent including the deletion of the swimming pool.

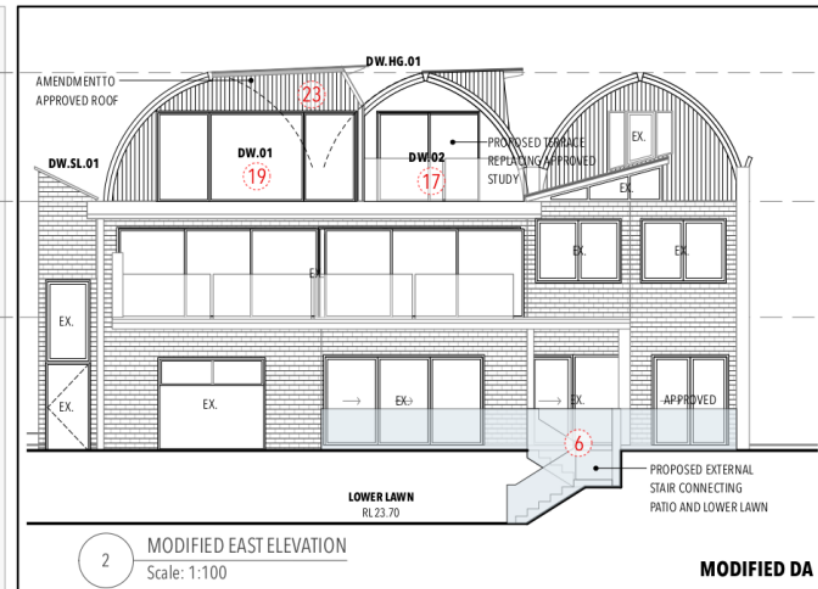






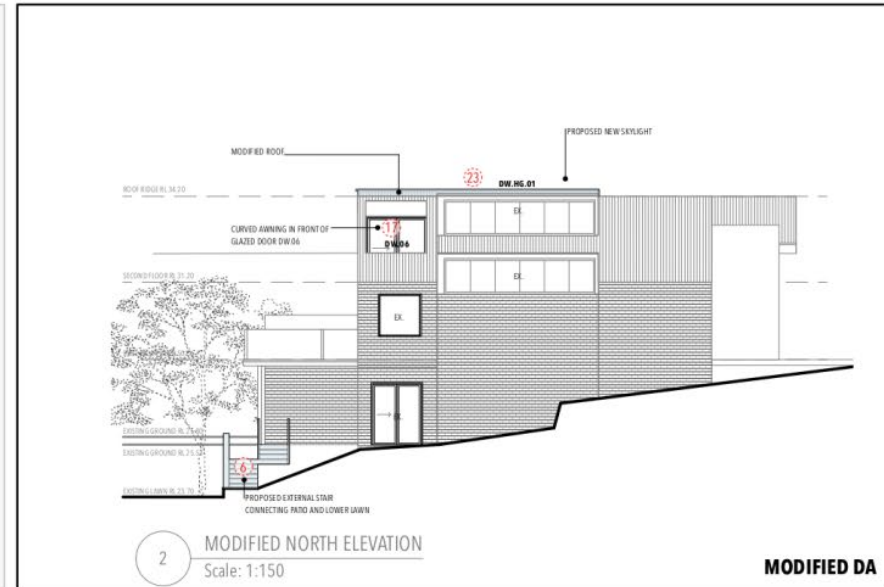
WINDOW AND DOOR SCHEDULE (APPROVED)		WINDOW AND DOOR SCHEDULE	
WINDOW AND DOORS	SQM	WINDOW AND DOORS	SQM
DW.01 (EAST)	7.1m <sup>2</sup>	DW.01 (EAST)	7.1m <sup>2</sup>
DW.02 (EAST)	7.1m <sup>2</sup>	DW.02 (EAST)	7.1m <sup>2</sup>
DW.03 (WEST)	7.1m <sup>2</sup>	DW.03 (WEST)	7.1m <sup>2</sup>
DW.04 (WEST)	3m <sup>2</sup>	DW.04 (WEST)	3m <sup>2</sup>
DW.05 (WEST)	5m <sup>2</sup>	DW.05 (WEST)	5m <sup>2</sup>
SKYLIGHTS	SQM	DW.06 (NORTH)	9.1m <sup>2</sup>
DW.SL.01	2m <sup>2</sup>	DW.07 (WEST)	1.8m <sup>2</sup>
		SKYLIGHTS	SQM
		DW.SL.01	2m <sup>2</sup>
		ARCHWAY (EASTING)	SQM
		DW.HG.01 (NORTH)	16.8m <sup>2</sup>

<p>BY NANNA LESIUK m: 0405128186 e: nanna.lesluk@housedarchitects.com</p>	<p>project: 20 PALM BEACH ROAD PALM BEACH MODIFICATIONS TO EXISTING DA</p>	<p>NOTE: All work to be in accordance with Australian Standards, The Building Code of Australia, other relevant codes, and with Manufacturer's recommendations and related standards. Check all dimensions on site prior to construction. Work to square dimensions only. Do not scale from drawings. Report any discrepancies to HOUSED for a decision before proceeding with work. This drawing is copyright and is the property of HOUSED and must not be used without authorisation. Notional Architect Name (only), 10/12</p>	<p>drawing: MOD.13 MODIFIED WEST ELEVATIONS</p>	<p>date: 10/8/21</p>	
			<p>title: MOD DA 2020/0214 REV A</p>	<p>scale: 1:100</p>	



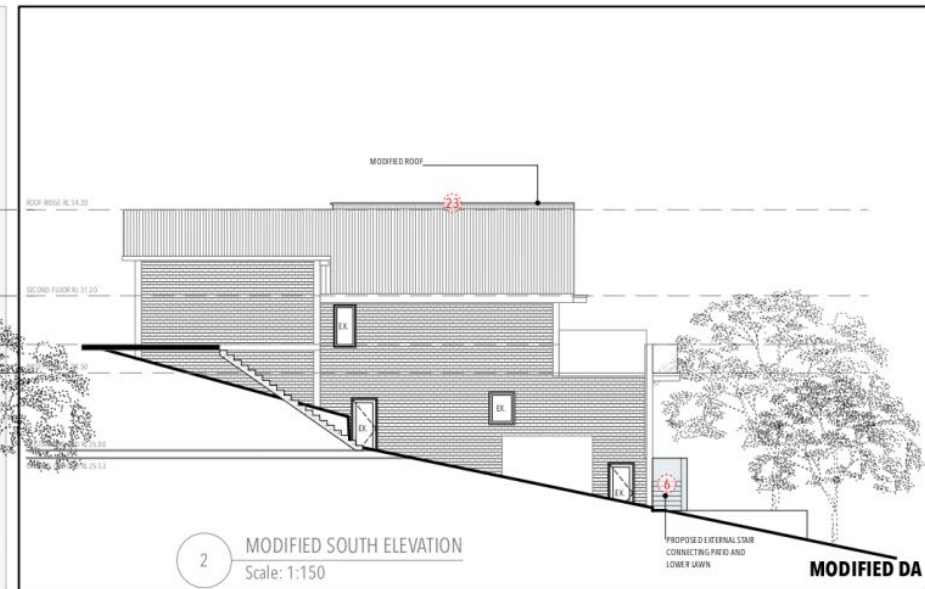
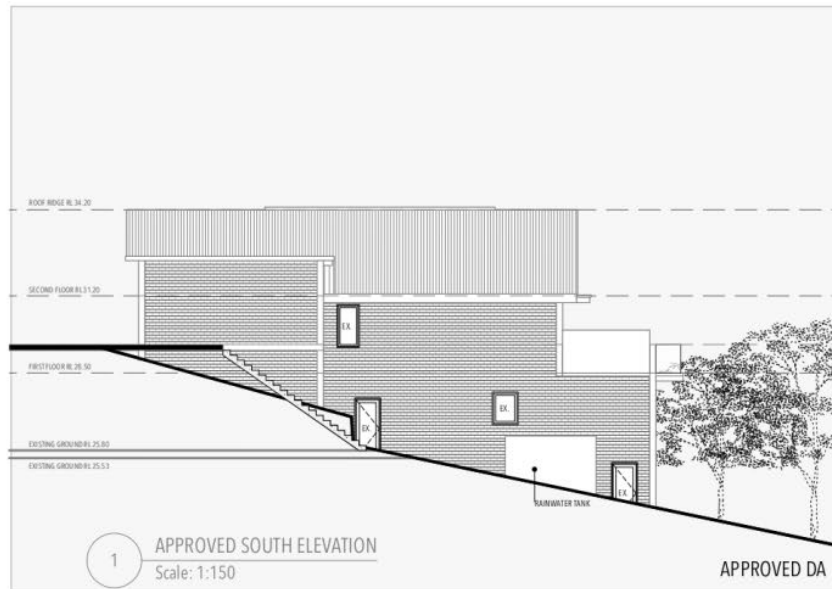
WINDOW AND DOOR SCHEDULE (APPROVED)		WINDOW AND DOOR SCHEDULE	
WINDOW AND DOORS	SQM	WINDOW AND DOORS	SQM
DW.01 (EAST)	7.1m <sup>2</sup>	DW.01 (EAST)	7.1m <sup>2</sup>
DW.02 (EAST)	7.1m <sup>2</sup>	DW.02 (EAST)	7.1m <sup>2</sup>
DW.03 (WEST)	7.1m <sup>2</sup>	DW.03 (WEST)	7.1m <sup>2</sup>
DW.04 (WEST)	3m <sup>2</sup>	DW.04 (WEST)	3m <sup>2</sup>
DW.05 (WEST)	5m <sup>2</sup>	DW.05 (WEST)	5m <sup>2</sup>
SKYLIGHTS	SQM	DW.06 (NORTH)	17.1m <sup>2</sup>
DW.SL.01	2m <sup>2</sup>	DW.07 (WEST)	1.8m <sup>2</sup>
		SKYLIGHTS	SQM
		DW.SL.01	2m <sup>2</sup>
		ARCHITECTURAL	SQM
		DW.HG.01 (NORTH)	16.8m <sup>2</sup>

<p>BY NANNA LESIUK m: 0405128186 e: nannalesiuk@housedarchitects.com</p>	<p>project 20 PALM BEACH ROAD PALM BEACH MODIFICATIONS TO EXISTING DA</p>	<p>NOTE: All work to be in accordance with Australian Standards, The Building Code of Australia, other relevant codes, and with Manufacturer's recommendations and instructions. Check all dimensions on site prior to construction. Work to square dimensions only. Do not scale from drawings. Report any discrepancies to HOUSED for a decision before proceeding with work. This drawing is copyright and is the property of HOUSED and must not be used without authorisation. Nominated Architect/Name Lesiuk, 10/12</p>	<p>drawing MOD.14 MODIFIED EAST ELEVATIONS</p>	<p>date 10/8/21</p>	
			<p>sheet MOD DA 2020/0214 REV A</p>	<p>scale 1:100</p>	



WINDOW AND DOOR SCHEDULE (APPROVED)		WINDOW AND DOOR SCHEDULE	
WINDOW AND DOORS	SQM	WINDOW AND DOORS	SQM
DW 01 (EAST)	7.1m <sup>2</sup>	DW 01 (EAST)	7.1m <sup>2</sup>
DW 02 (EAST)	7.1m <sup>2</sup>	DW 02 (EAST)	7.1m <sup>2</sup>
DW 03 (WEST)	7.1m <sup>2</sup>	DW 03 (WEST)	7.1m <sup>2</sup>
DW 04 (WEST)	3m <sup>2</sup>	DW 04 (WEST)	3m <sup>2</sup>
DW 05 (WEST)	5m <sup>2</sup>	DW 05 (WEST)	5m <sup>2</sup>
SKYLIGHTS	SQM	DW 06 (NORTH)	17.1m <sup>2</sup>
DW SL 01	2m <sup>2</sup>	DW 07 (WEST)	1.8m <sup>2</sup>
		SKYLIGHTS	SQM
		DW SL 01	2m <sup>2</sup>
		ARCHITECTURAL LEADING	SQM
		DW HL 01 (NORTH)	16.8m <sup>2</sup>

<p><b>HOUSED</b> BY NANNA LESIUK m: 0405128186 e: nannalesiuk@housedarchitects.com</p>	<p>project <b>20 PALM BEACH ROAD PALM BEACH MODIFICATIONS TO EXISTING DA</b></p>	<p>NOTE: All work to be in accordance with Australian Standards, The Building Code of Australia, other relevant codes, and with Manufacturer's recommendations and product instructions. <b>Check all dimensions</b> on-site prior to construction. Work to square dimensions only. Do not scale from drawings. Report any discrepancies to HOUSED by a date/time before proceeding with work. This drawing is copyright and is the property of HOUSED and must not be used without authorisation. Nominal Architect/Normal Level, 100%.</p>	<p>drawing MOD.15 MODIFIED NORTH ELEVATIONS</p>	<p>date 10/8/21</p>	
			<p>revision MOD DA 2020/0214 REV A</p>	<p>scale 1:100</p>	



WINDOW AND DOOR SCHEDULE (APPROVED)		WINDOW AND DOOR SCHEDULE	
WINDOW AND DOORS	SQM	WINDOW AND DOORS	SQM
DW.01 (EAST)	7.1m <sup>2</sup>	DW.01 (EAST)	7.1m <sup>2</sup>
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		SKYLIGHTS	SQM
		DW.SL.01	2m <sup>2</sup>
		ARCHITECTURAL	SQM
		DW.01 (NORTH)	16.8m <sup>2</sup>

<p><b>HOUSED</b> BY NANNA LESIUK m: 0405128186 e: nannalesiuk@housedarchitects.com</p>	<p>project <b>20 PALM BEACH ROAD PALM BEACH MODIFICATIONS TO EXISTING DA</b></p>	<p>NOTE: All work to be in accordance with Australian Standards, The Building Code of Australia, other relevant codes, and with Manufacturer's recommendations and instructions. <b>Check all dimensions</b> on-site prior to construction. Work to square dimensions only. Do not scale from drawings. Report any discrepancies to HOUSED by a disclaimer proceeding with work. This drawing is copyright and is the property of HOUSED and must not be used without authorisation. Nominate Architect/Name (scale, 100%)</p>	<p>drawing MOD.16 MODIFIED SOUTH ELEVATIONS</p>	<p>date 10/8/21</p>	
			<p>revision MOD DA 2020/0214 REV A</p>	<p>scale 1:100</p>	





## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/1231
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<b>Responsible Officer:</b>	Thomas Prosser
<b>Land to be developed (Address):</b>	Lot 1 DP 239368, 1 A Florida Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Alterations and additions to a dwelling house including a spa
<b>Zoning:</b>	E4 Environmental Living
<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>	Louise Hood Alastair Roderick Hood
<b>Applicant:</b>	Matthew Cernec

<b>Application Lodged:</b>	27/07/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	09/08/2021 to 23/08/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 33.8%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 905,000.00
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### EXECUTIVE SUMMARY

Development Application (DA2021/1231) proposes alterations and additions to the existing dwelling. The additions involve a reconfiguration and alteration of existing built form which does not comply with development standard for building height.

The application is referred to the Development Determination Panel as the proposal has a variation to the development standard for building height of greater than 10%. In this regard, the variation is 33.8% (being 11.37m).

The alterations and additions involve refurbishment of an existing dwelling which does not comply with the development standard for building height. This can be partly attributed to the slope of the site,

particularly to the northern section of the building footprint.

The refurbishment and extensions relate to the existing deck level, existing façade, and existing roof. There is no substantial addition of building bulk, and the number of storeys will remain as exists. The dwelling is also well separated from adjoining living spaces and the public domain. As such, the height non-compliance would not result in any unreasonable amenity impact or visual impact.

The proposal also involves a reduction in landscaped area at the front of the site to cater for a car parking area which provides two spaces.

Public exhibition of the development resulted in no submissions to the proposal.

Accordingly, the application is referred to the DDP with a recommendation for approval subject to conditions.

### **PROPOSED DEVELOPMENT IN DETAIL**

The proposal is for alterations and additions to the existing dwelling. In detail, this involves:

#### Lower Ground Floor

- Replacement of existing parking to provide for two new car parking spaces
- Replacement and regrading of driveway
- New landing and new front door entry
- New spa and decking in south-western corner

#### First Floor

- New timber over existing deck
- Extension of deck at north-eastern corner

#### Second Floor

- New timber deck over existing deck
- Extension of deck at north-eastern corner
- Demolition of roof to deck and replacement with vergola roof
- Internal reconfiguration
- New metal roof

### **ASSESSMENT INTRODUCTION**

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

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

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

### SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
 Pittwater 21 Development Control Plan - D12.8 Building envelope  
 Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 239368 , 1 A Florida Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The subject site consists of an allotment located on the western side of Rock Bath Road. The site to the south of Florida Road.</p> <p>The site is irregular in shape with a frontage of 30m along Rock Bath Road and a depth of 38.05m.</p> <p>The site is located within the E4 Environmental Living zone and accommodates dwelling house.</p> <p>The site is has a crossfall from south down to north, and contains various vegetation to the front and rear.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by residential development.</p>

Map:



## SITE HISTORY

### Pre-lodgement Meeting - PLM2021/0102

The following comments were provided in notes for a Pre-lodgement meeting held on 25 May 2021.

*"The works proposed represent non-compliances with Council policies in regard to:*

- *Height of Buildings;*
- *Boundary Envelope; and*
- *Driveway and parking access grades.*

*However, the circumstances of the non-compliances are relatively minor (in contrast to the existing dwelling) and are not likely to result in adverse amenity impacts to adjoining dwellings. The removal of the 2 trees could be justified, subject to suitable replacement vegetation.*

*In this regard, the proposal in its current form can be supported in principle."*

This development application involves the same concept for the proposed development and is supported subject to conditions imposed by Council's Landscape officer. Council's Landscape officer has also stated that replacement planting provided on the Landscape plan is acceptable.

## 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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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 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>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>
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 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 not classified as bush fire prone land.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 09/08/2021 to 23/08/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

### REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p><b>General Comments</b></p> <p>It is unclear if the existing fireplace is gas or a solid fuel heater, If its a gas heater no conditions recommend.</p> <p>If its an oil or solid fuel heater Environmental Health recommend the following conditions to the upgrade.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p> <p><b>Planner comment</b></p> <p>A new solid fuel heater is proposed and therefore relevant conditions are imposed.</p>
Landscape Officer	<p>The development application is for alterations and additions to an existing dwelling, including the reconfiguration of the existing first and second floor decks and the replacement and extension of an existing parking bay to allow for 2 spaces.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D12 Palm Beach Locality</li> </ul> <p>The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the E4 Environmental Living zone.</p>

Internal Referral Body	Comments
	<p>Minimal earthworks are proposed to prepare the site for construction of the parking bay, with the majority of works proposed within the existing building footprint. The majority of the existing landscaping is retained with the exception of the proposal to remove ... to accommodate the extended parking bay.</p> <p>The majority of the proposed works will occur within the existing footprint of the dwelling, and will partially reduce existing landscaping for the proposed extension to the existing parking bay that involves the removal of two trees as recommended in the Arboricultural Impact Assessment. A Landscape Plan is provided with additional native planting to mitigate the tree removal.</p>
NECC (Bushland and Biodiversity)	<p>Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related provisions:</p> <ul style="list-style-type: none"> <li>• Biodiversity Conservation Act 2016</li> <li>• Pittwater LEP cl. 7.6 Biodiversity Protection</li> <li>• Pittwater 21 DCP cl. B4.6 Wildlife Corridors</li> </ul> <p>The Arboricultural Report recommends the removal of two (2) native trees, including Tree 6 (<i>Eucalyptus robusta</i>) and Tree 7 (<i>Angophora floribunda</i>) due to development works. Additional significant native canopy trees will be retained and protected within the site, and are to be protected in accordance with the Tree Protection Requirements in Section 11 of the Arboricultural Report (Urban Arbor, March 2021). Two (2) native canopy trees are to be replanted within the site to compensate for the loss of canopy as a result of the proposed works and to ensure the proposals compliance with P21 DCP cl. B4.6. Replacement species are to reflect those lost, and should be selected using Council's Native Plant Species Guide – Pittwater Ward, which is available on the Council website - <a href="https://www.northernbeaches.nsw.gov.au/node/34932">https://www.northernbeaches.nsw.gov.au/node/34932</a> ). As per Landscape comments, one replacement tree is required to be an <i>Angophora floribunda</i>.</p> <p>The Landscape Plan (Watershed Design, July 2021) outlines the inclusion of ten (10) species for landscaping works, however only three (3) of which have been selected from Council's Native Plant Species Guide - Pittwater Ward. As per the comments provided at the Pre-lodgement meeting in May 2021, 60% of the species are to be selected from Council's Native Plant Species Guide - Pittwater Ward. The Landscape Plan is to be amended to reflect these requirements, as well as including two (2) replacement canopy trees.</p> <p>Subject to these conditions of consent, Council's Biodiversity referrals team are satisfied that the proposed development complies with the controls listed above.</p>
NECC (Development)	The internal driveway gradient exceeds 1in 4 and engineering plans

Internal Referral Body	Comments
Engineering)	and longsections by TEF Consulting have been provided. Owners consent for works on the ROW have been provided. No objections 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A424051).

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

##### SEPP (Infrastructure) 2007

###### Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the

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

Comment:

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

**SEPP (Coastal Management) 2018**

A further assessment is made in relation to SEPP (Coastal Management) 2018 as follows:

*11 Development on land in proximity to coastal wetlands or littoral rainforest*

*(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*

- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
- (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

The new dwelling that is sufficiently separated from coastal wetlands and rainforest.

*12 Development on land within the coastal vulnerability area*

*Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:*

- (a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) the proposed development:*
  - (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
  - (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
  - (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.*

Comment:

The proposal will not have a detrimental impact on the above and is not likely to alter coastal

processes. This is a result of the lack of additional bulk proposed and the physical separation of the site from the beach and coastal area (over 50m).

**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 proposal will not have an adverse impact on the above as the proposed works do not involve excavation, substantial addition of bulk, or any other change to the natural environment which could cause an unreasonable impact on the coastal environment area.

*(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The proposal retains the siting of the existing dwelling which is over 50m from the coastline. This physical separation from the coastline along with the proposed works being maintained generally within the existing siting, provides a circumstance in which potential impact is sufficiently minimised.

As such, it is considered that the application complies 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**

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Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.37m	33.8%	No (see comments)

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	No
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

**4.6 Exceptions to development standards**

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.37m
Percentage variation to requirement:	33.8%

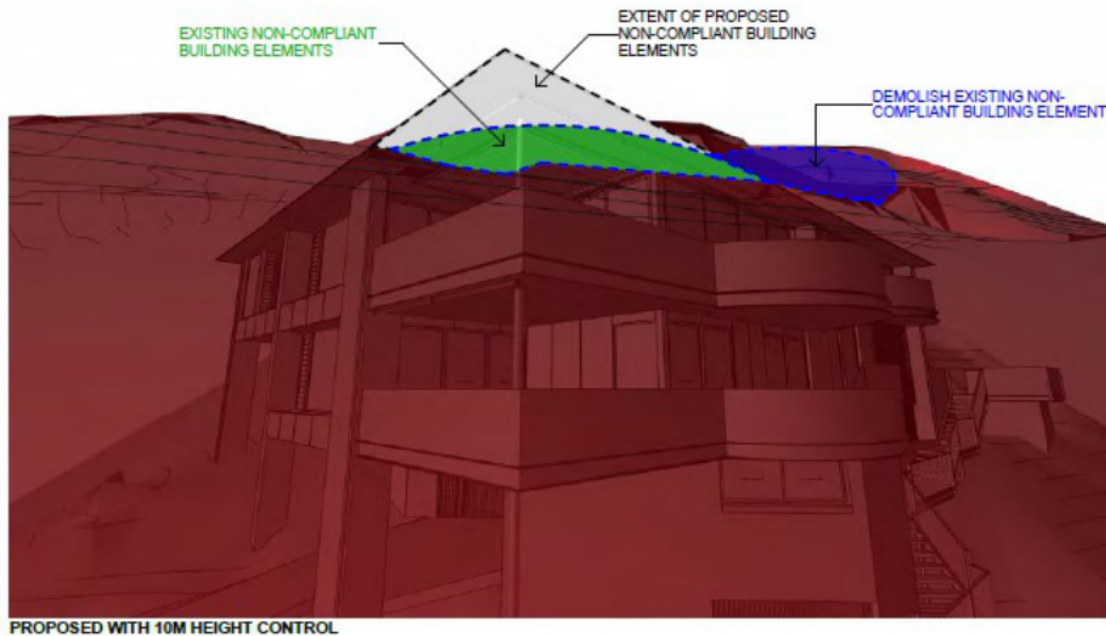


Figure 1: Representation of building height provided by applicant. It is noted that this is a representation elements above 10m (which is an exception allowed under Clause 4.3 of the LEP), and that this exception does not apply to the development. However, this diagram provides comparison between existing building non-compliant elements and new building non-compliant elements.

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3 - Height of Buildings development standard is not 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.*

*(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*

*(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.*

**Clause 4.6 (4)(a)(i) (Justification) assessment:**

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

*including the objects in s 1.3 of the EPA Act.'*

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

The variation is a result of alterations to an existing building which is on land with a significant slope. It is argued that alterations to achieve compliance would result in a less architecturally pleasing outcome, and that the variation does not result in any unreasonable amenity or visual impact.

It is agreed that the variation can be partly attributed to the slope of the land, and that the compliance would require greater changes to the dwelling which may not result in a desirable outcome.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

**Clause 4.6 (4)(a)(ii) (Public Interest) assessment:**

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

*(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:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

**Objectives of 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 proposal involves re-configuration of an existing deck area to the side of the site. This re-configuration will maintain a design which is consistent with the desired character by retaining sufficient articulation, surrounding vegetation, and physical separation from neighbours and the public view.

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

Comment:

The proposal maintains the number of storeys as exists on the site, and the extensions and alterations to the deck area will not add bulk that would be incompatible with surrounding development. In particular, the topography and subdivision pattern of the area does not result in a discernible pattern in height and scale of development, and the proposal will match the 2 to 3 storey development in the area.

*c) to minimise any overshadowing of neighbouring properties,*

Comment:

The proposed alterations are well separated from living spaces and private open space of neighbouring properties so that overshadowing impact is limited. The proposal also complies with the numerical controls for Solar Access under C1.4 of the Pittwater DCP. As such, the proposal appropriately minimises overshadowing the neighbouring properties.

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

Comment:

The proposed dwelling maintains sufficient articulation and setbacks to ensure appropriate opportunity for view corridors through the site.

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



Comment:

The proposal maintains sufficient articulation with the alterations to the decks and roof. Along with the stepping of the dwelling down with the slope, the proposed development responds appropriately to topography.

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

Comment:

The proposal maintains surrounding vegetation, and conditions have been imposed to ensure tree and vegetation protection. The alterations to the building will not have any other unreasonable impact on heritage or the natural environment.

## **Zone objectives**

### 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.  
To ensure that residential development does not have an adverse effect on those values.  
To provide for the continuance of a limited range of existing small-scale water-related business and leisure uses.  
To ensure that development, by way of its character, design, location and materials of construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.  
To protect and enhance the natural landscape by conserving remnant bushland and rock outcrops and by encouraging the spread of an indigenous tree canopy.*

Comment:

The proposed alterations to the dwelling will maintain low impact development that will integrate appropriately with the natural environment, and provide sufficient articulation and stepping to minimise visual impact.

Conclusion:

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

### **Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with

correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. 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 buildings Development Standard is assumed by the Local Planning Panel.

### Pittwater 21 Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	6.5m (car parking)	N/A	Yes
Rear building line	6.5m	9.6m	N/A	Yes
Side building line	2.5m	4.5m (existing)	N/A	Yes
	1m	2m (new deck)	N/A	Yes
Building envelope	3.5m	North-west: Outside envelope	N/A	No (see comments)
	3.5m	South-east: Within envelope	N/A	Yes
Landscaped area	60%	56% (460m <sup>2</sup> )	N/A	No (see comments)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.11 Fences - General	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **D12.8 Building envelope**

#### **Description of non-compliance**

The proposal does not comply with the control for building envelope at the north-western elevation. This can be seen in a representation of the non-compliance **provided by** the applicant below:

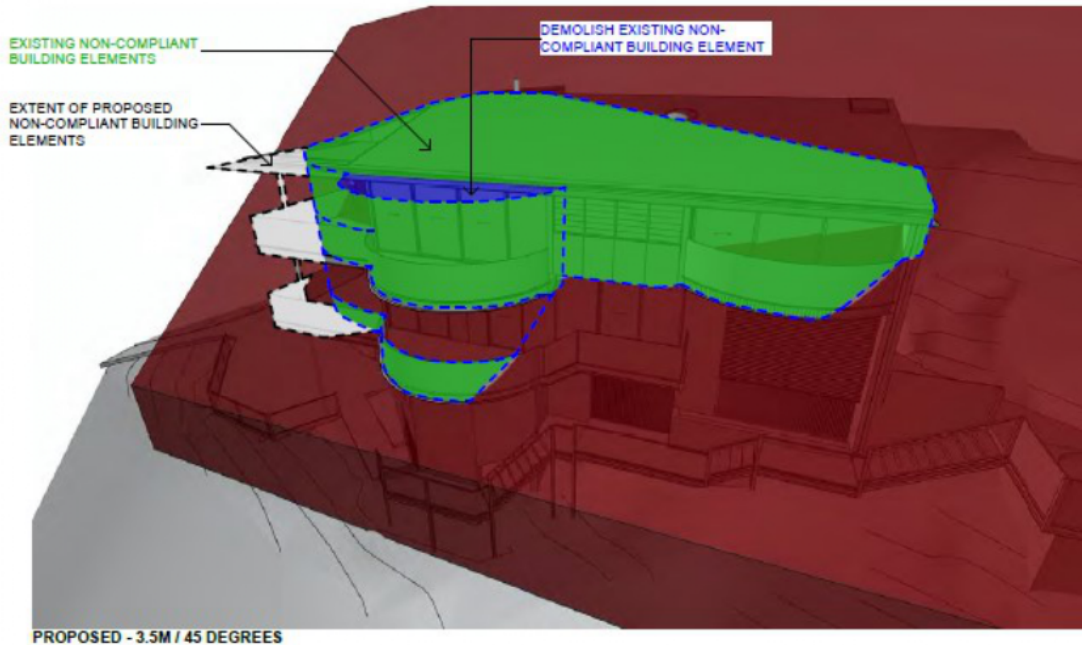


Figure 1: Representation of envelope non-compliance at north-west elevation

**Merit Assessment**

The following merit assessment is made by addressing the overarching outcomes of the clause:

*To achieve the desired future character of the Locality.*

The proposal maintains the desired future character of the Palm Beach Locality by maintaining a two to three storey built form with articulation and stepping. Further, surrounding vegetation ensures an appropriate landscaped setting is maintained.

*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 resultant building scale will be located below the height of existing trees so that visual impact of built form is minimised.

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

The proposed development has responded to the spatial characteristics of the existing natural environment by locating works predominately within the existing building footprint, in turn minimising the impact on the natural environment.

*The bulk and scale of the built form is minimised.*

The bulk and scale maintains articulated form for walls walls and various components of the building to successfully minimise the extent of built form.

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

The building envelope non-compliances do not give rise to any impact upon existing views and vistas to and/or from public/private places.

*To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties.*

Through appropriate physical separation and vegetative screening, the proposal has been able to satisfactorily demonstrate the preservation of existing privacy, amenity and solar access within the development site and to neighbouring properties.

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

Existing vegetation is to be maintained to surround the site (subject to conditions), and this which mitigates against the visual impact of the built form.

In light of the above, it is considered that the proposal, notwithstanding the non-compliance provides a sympathetic and well-considered built form that responds to the slope of the site. Therefore, the proposal is considered appropriate and a variation should be supported.

#### **D12.10 Landscaped Area - Environmentally Sensitive Land**

##### **Description of non-compliance**

The numerical control for landscaped area is 60% of the site.

The proposal provides for a total landscaped area of 460m<sup>2</sup> or 56%, resulting in a reduction from the existing situation - 512m<sup>2</sup> (62%).

##### **Merit Assessment**

The following merit assessment is made by addressing the overarching outcomes of the clause:

*Achieve the desired future character of the Locality.*

The proposal maintains substantial landscaped area and vegetation to both frontages, and also has a relatively large landscaped road reserve. Along with the compliant setbacks to the dwelling, and the articulation of the built form, this provides a situation in which the proposal will meet the desired future character.

*The bulk and scale of the built form is minimised.*

The bulk and scale of the built form will be minimised through maintenance of vegetation so plant species can assist in minimising the built form and screening outdoor open space areas.

A reasonable level of amenity and solar access is provided and maintained.

There will be no unreasonable impact to the level of amenity and solar access enjoyed by adjoining dwellings will not be impacted. The proposal will also provide for suitable amenity and solar access



within the development site for occupants of the dwelling.

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

Vegetation will be appropriately maintained and enhanced across the site to help visually reduce the built form.

*Conservation of natural vegetation and biodiversity.*

Natural vegetation and biodiversity will be retained and managed through the maintenance of existing vegetation (subject to conditions).

*Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*

The proposal involves sufficient areas of landscaped area to surround hard space areas. Further to this, vegetation surrounds the car parking area and the front of the site.

*To preserve and enhance the rural and bushland character of the area.*

The proposal maintains vegetation and maintains compliant setbacks to the existing dwelling. This ensures that landscaping is appropriately integrated with the built form to preserve the character of the area.

*Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.*

Sufficient soft surface will be provided to surround hard spaces areas . This allows for the infiltration of water to the water table, and for minimisation of run-off to assist with general stormwater management.

In light of the above, the proposal is considered reasonable with regard to landscaped area.

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

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **POLICY CONTROLS**

##### **Northern Beaches Section 7.12 Contributions Plan 2021**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$9,050 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$905,000.

#### **CONCLUSION**

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

## **Conclusion**

Development Application (DA2021/1231) has proposed alterations and additions to the existing dwelling.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, the relevant codes and policies of Council, the relevant provisions of the Pittwater DCP.

The proposal has numerical non-compliances with planning controls and the building height development standard. However, these do not give rise to any unreasonable environmental impact.

## **Public Exhibition**

The public exhibition of the DA resulted in no submissions.

It is recommended that the Development Determination Panel approve the application subject to conditions.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/1231 for Alterations and additions to a dwelling house including a spa on land at Lot 1 DP 239368, 1 A Florida Road, PALM BEACH, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA08 - Proposed Site and Roof Plan - Issue I	19/07/21	Watershed Design
DA09 - Driveway - Issue I	19/07/21	Watershed Design
DA10 - Proposed Lower Ground Floor - Issue I	19/07/21	Watershed Design
DA11 - Proposed Ground Floor Plan - Issue I	19/07/21	Watershed Design
DA12 - Proposed First Floor Plan - Issue I	19/07/21	Watershed Design
DA13 - External Works 01 - Issue I	19/07/21	Watershed Design
DA14 - External Works 02 - Issue I	19/07/21	Watershed Design
DA15 - Elevation - North - Issue I	19/07/21	Watershed Design
DA16 - Elevation - East - Issue I	19/07/21	Watershed Design
DA17 - Elevation - South - Issue I	19/07/21	Watershed Design
DA18 - Elevation - West - Issue I	19/07/21	Watershed Design
DA19 - Section A-A - Issue I	19/07/21	Watershed Design
DA20 - Section B-B - Issue I	19/07/21	Watershed Design
DA21 - Section C-C - Issue I	19/07/21	Watershed Design
DA33 - Exterior Finishes Schedule - Issue I	19/07/21	Watershed Design

DA34 - Exterior Finishes Schedule - Issue	19/07/21	Watershed Design
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<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>
Geotechnical Investigation	21 April 2021	White Geotechnical Group
Arboricultural Impact Assessment Report	24 March 2021	Urban Arbor

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

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

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	21/07/2021	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.

## 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.

### 3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) 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.
- (k) 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.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
- Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
- (i) Swimming Pools Act 1992
  - (ii) Swimming Pools Amendment Act 2009
  - (iii) Swimming Pools Regulation 2018
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$9,050.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$905,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

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

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

5. **Security Bond**

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

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

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

6. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

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 White Geotechnical Group dated 21/4/2021 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. **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

9. **Amendment of Landscape Plans**

The submitted Landscape Plan is to be amended in accordance with the following:

Two (2) native canopy trees are to be replanted within the site to compensate for the loss of canopy as a result of the proposed works and to ensure the proposals compliance with P21 DCP cl. B4.6. Replacement species are to reflect those lost, and should be selected using Council's Native Plant Species Guide – Pittwater Ward, which is available on the Council website -<https://www.northernbeaches.nsw.gov.au/node/34932> ). As per Landscape comments, one replacement tree is required to be an *Angophora floribunda*.

The Landscape Plan (Watershed Design, July 2021) outlines the inclusion of ten (10) species for landscaping works, however only three (3) of which have been selected from Council's Native Plant Species Guide - Pittwater Ward. As per the comments provided at the Pre-lodgement meeting in May 2021, 60% of the species are to be selected from Council's Native Plant Species Guide - Pittwater Ward. The Landscape Plan is to be amended to reflect these requirements, as well as including two (2) replacement canopy trees.

The amended Landscape Plan is to be certified by a qualified landscape architect and provided to the Certifying Authority prior to issue of the Construction Certificate.

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

10. **Vehicle Driveway Gradients**

The Applicant is to provide engineering plans including certification for the internal driveway gradients by a suitably qualified consulting engineer.

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

Reason: To ensure suitable vehicular access to private property.

11. **Sydney Water "Tap In"**

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



Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

## CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

### 12. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:

- i) section 10. Recommendations
- ii) section 11. Tree Protection Requirements
- iii) section 12. Construction Hold Points for Tree Protection

All tree protection measures specified 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.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

- i) 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.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

### 13. Tree Removal Within the Property

This consent approves the removal of the following tree(s) within the property (as recommended



in the Arboricultural Impact Assessment):

- i) tree 6 Eucalyptus robusta
- ii) tree 7 Angophora floribunda

The approved removal is subject to planting of one replacement Angophora floribunda in proximity to the locations of the removed trees.

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.

Reason: To enable authorised building works.

14. **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 protect native wildlife.

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

15. **Protection of Rock and Sites of Significance**

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

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

16. **Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages and the street trees fronting the development site (trees 3, 4 and 5) shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

Tree protection fencing, trunk protection and ground protection for street tree(s) fronting the development site shall comply with the recommendations of the Arboricultural Impact Assessment unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

Any fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Street tree protection.

17. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation, including tree numbers 3, 4 and 5,
- iv) note: tree numbers 1, 2, 9, 10, 11, 12, 13 and 14 are proposed for retention within the site.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and 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.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: Tree and vegetation protection.

18. **Road Reserve**

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

Reason: Public safety.

19. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

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

20. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Plans, and inclusive of the following conditions:

i) one *Angophora floribunda* shall be planted within the front setback in proximity to the extended parking area, planted at 75 litre minimum size, and at least 2 metres from the parking edge, and located a minimum of 3 metres from existing and proposed buildings, and other trees.

Prior to the issue of an Occupation Certificate, details shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

**Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative** <https://5milliontrees.nsw.gov.au/>

21. **Condition of Retained Vegetation - Project Arborist**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- ii) extent of damage sustained by vegetation as a result of the construction works,
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

22. **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.

23. **Protection of Habitat Features**

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

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

Reason: To protect wildlife habitat.

24. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the amended and approved Landscape Plans and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

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

25. **Replacement of Canopy Trees**

At least 2 locally native canopy trees are to be planted on site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with Council's Native Plant Species Guide – Pittwater Ward, which is available on the Council website -<https://www.northernbeaches.nsw.gov.au/node/34932> ). As per Landscape comments, one replacement tree is required to be an *Angophora floribunda*.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

26. **No Weeds Imported On To The Site**



No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2021 – 2026) are to be imported on to the site prior to or during construction works.

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

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

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

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

28. **Installation of solid/fuel burning heaters**

Installation work must be carried out by an appropriately experienced and qualified person and in accordance with the relevant provisions of AS2918:2001 – Domestic Solid Fuel Burning Appliances – Installation

Reason: To ensure the installation is completed in a legislatively compliant manner.

29. **Certification of solid fuel burning heaters**

A certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements is to be submitted to Council prior to the operation of the solid fuel heater.

Reason: To ensure the system operates in a legislatively compliant manner.

30. **Certificate of Compliance - Solid Fuel Heater**

Provide Council a certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements.

Reason: To ensure the system operates in a legislatively compliant manner.

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

31. **Landscape Maintenance**

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

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

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.



Reason: To maintain local environmental amenity.

32. **Replacement of Canopy Trees**

Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life.

Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees.

33. **Maintenance of solid fuel heaters**

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

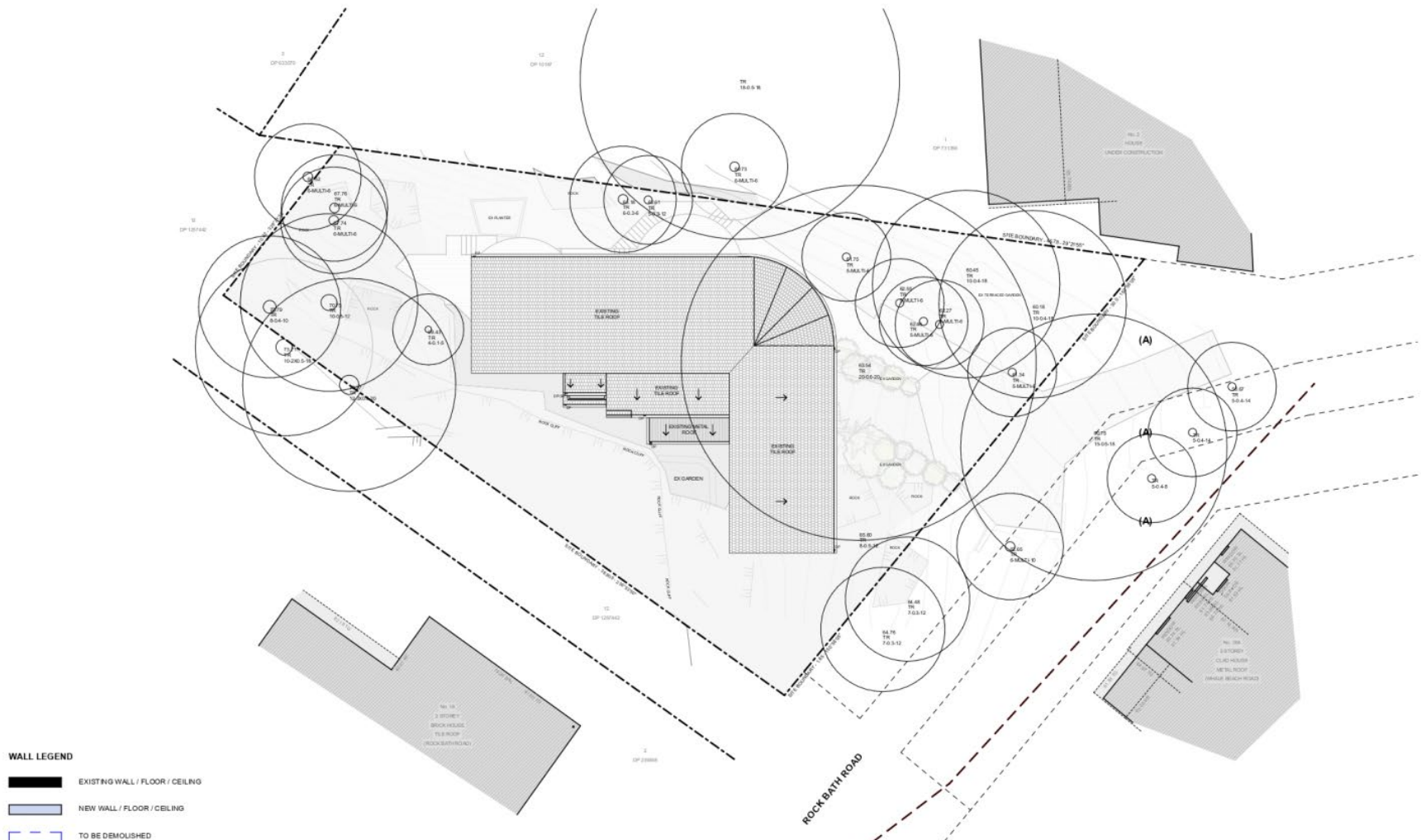
Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

34. **Operation of solid fuel burning heaters**

You are requested to take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures should include:

- Using dry seasoned hardwood
- Storing wood in a dry well ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke

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



- WALL LEGEND**
- EXISTING WALL / FLOOR / CEILING
  - NEW WALL / FLOOR / CEILING
  - TO BE DEMOLISHED

- NOTES:**
- ANY DISCREPANCIES TO BE BROUGHT TO THE ARCHITECT'S ATTENTION
  - USE FIGURE DIMENSION IN PREFERENCE TO SCALING
  - ONLY SCALE UNDER DIRECTION FROM ARCHITECT
  - BUILDER TO EXAMINE SITE AND VERIFY CONDITIONS AND DIMENSIONS
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Issue ID	Issue Name	Issue Date
B	Preferred Option	2/3/21
C	Client Update	1/4/21
D	Issue to Watermark Planning	12/4/21
E	Issue for Pre-Lodgement	2/14/21
F	Issue for Consultants	6/7/21
H	Issue for Review	10/7/21
I	Issue for Development Application	19/7/21

**W** **WATERSHED DESIGN** architecture interiors landscapes

REGISTERED ARCHITECT: MARK KOROUL REGISTRATION NUMBER: 6221  
 PHONE: 9077 1076 FAX: 02 9976 0825 EMAIL: INFO@WATERSHEDDESIGN.COM.AU  
 ADDRESS: LEVEL 1, 167 PITTWATER ROAD MANLY NSW 2095 AUSTRALIA

CLIENT:	LOUISE & ALASTAIR HOOD	ADDRESS:	1A FLORIDA ROAD PALM BEACH NSW	JOB NO.:	20013	DRAWING NO.:	DA04
PROJECT:	HOOD HOUSE	DRAWING:	EXISTING SITE & ROOF PLAN	DRAWN:	MC	ISSUE:	I
				CHECKED:	MK		
				SCALE:	1:1, 1:200		



NOTES:

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Issue ID	Issue Name	Issue Date
H	Issue for Review	19/7/21
I	Issue for Development Application	19/7/21

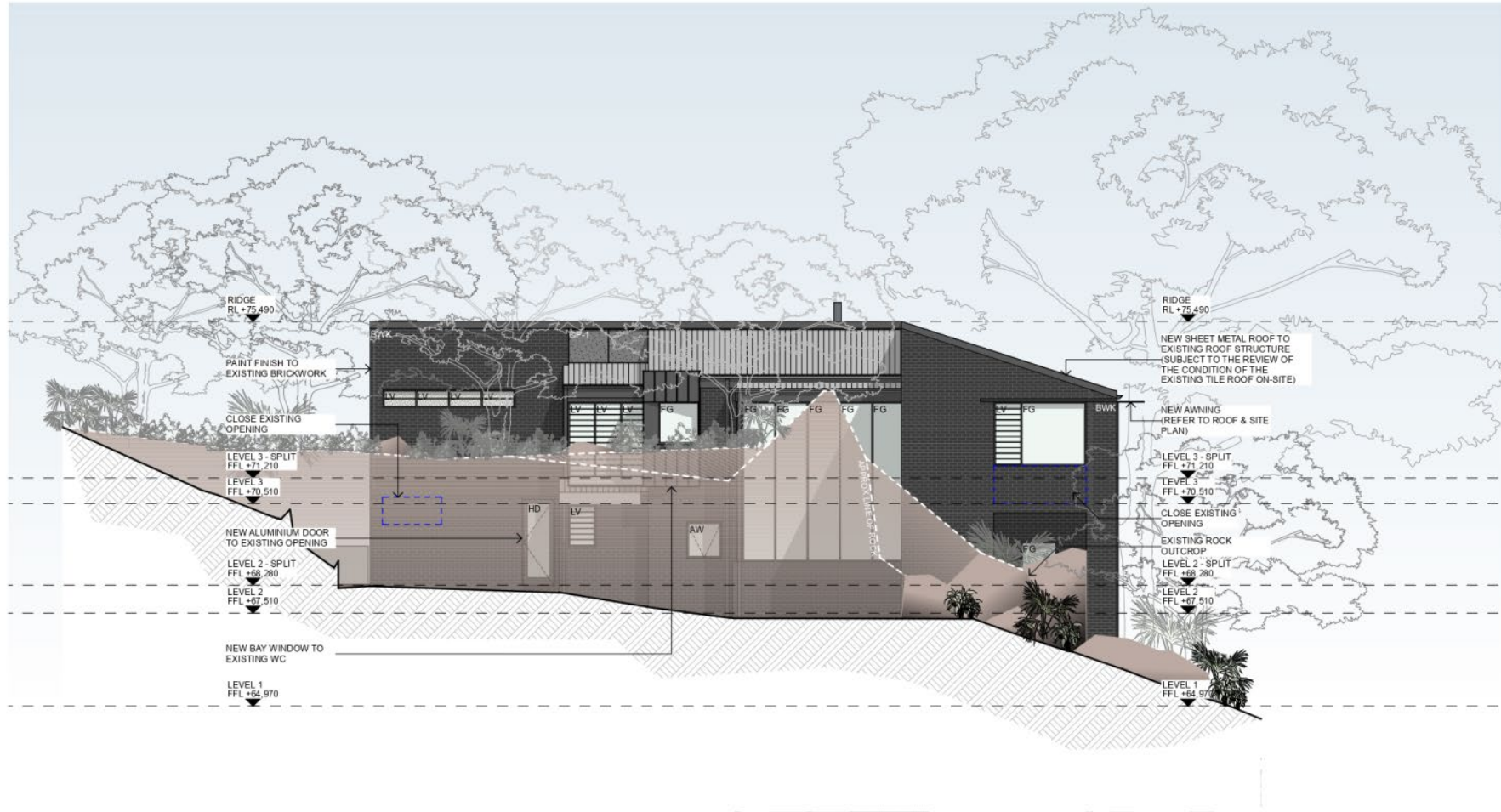


REGISTERED ARCHITECT: MARK KOROUL REGISTRATION NUMBER: 6221  
PHONE: 9077 1076 FAX: 02 9976 0825 EMAIL: INFO@WATERSHEDDESIGN.COM.AU  
ADDRESS: LEVEL 1, 167 PITTWATER ROAD MANLY NSW 2095 AUSTRALIA



CLIENT:	LOUISE & ALASTAIR HOOD	ADDRESS:	1A FLORIDA ROAD PALM BEACH NSW	JOB NO.:	20013	DRAWING NO.:	DA15
PROJECT:	HOOD HOUSE	DRAWING:	ELEVATION - NORTH	DRAWN:	MC	ISSUE:	I
				CHECKED:	MK		
				SCALE:	1:100		





NOTES:

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Issue ID	Issue Name	Issue Date
H	Issue for Review	19/7/21
I	Issue for Development Application	19/7/21

**W** WATERSHED  
DESIGN architecture  
interiors  
landscapes

REGISTERED ARCHITECT: MARK KOROUL REGISTRATION NUMBER: 6221  
PHONE: 9077 1076 FAX: 02 9076 0825 EMAIL: INFO@WATERSHEDDESIGN.COM.AU  
ADDRESS: LEVEL 1, 107 PITTWATER ROAD MANLY NSW 2095 AUSTRALIA

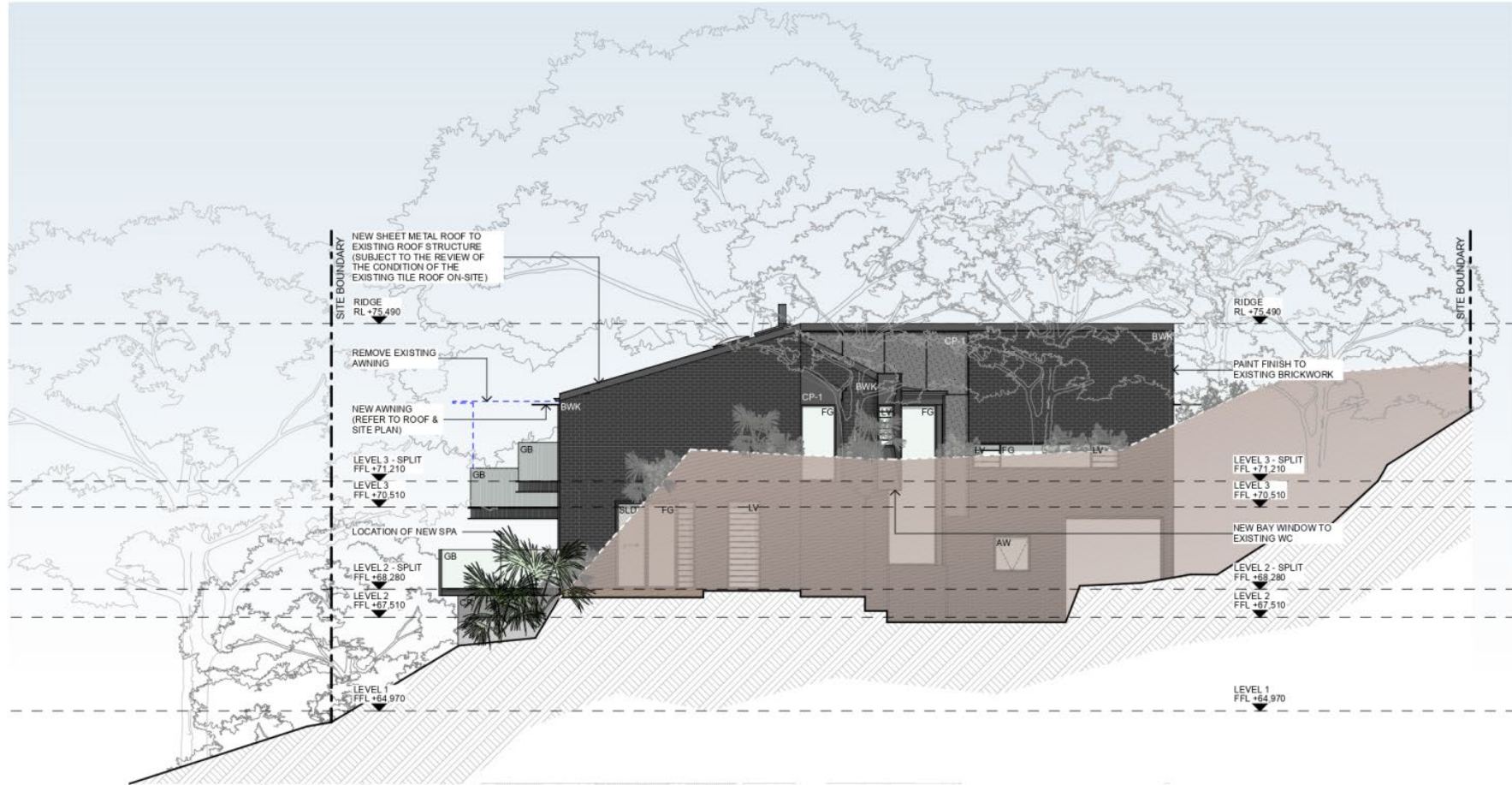


CLIENT: LOUISE & ALASTAIR HOOD  
PROJECT: HOOD HOUSE

ADDRESS: 1A FLORIDA ROAD PALM BEACH NSW  
DRAWING: ELEVATION - EAST

JOB NO: 20013  
DRAWN: MC  
CHECKED: MK  
SCALE: 1:100

DRAWING NO:  
**DA16**  
ISSUE:  
**I**



NOTES:

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Issue ID	Issue Name	Issue Date
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I	Issue for Development Application	19/7/21

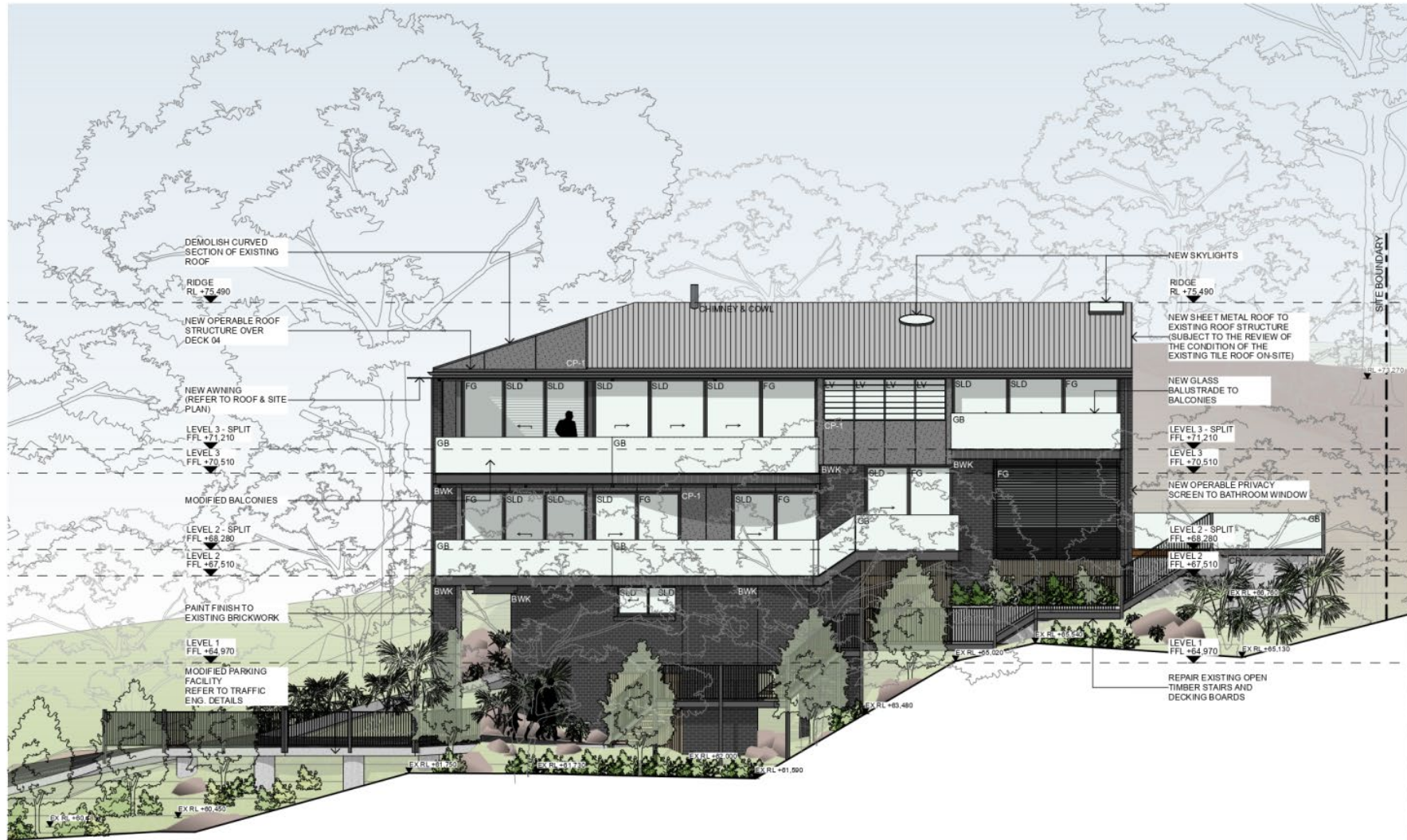
**W** WATERSHED  
DESIGN architecture  
interiors  
landscapes

REGISTERED ARCHITECT: MARK KOROUL REGISTRATION NUMBER: 6221  
PHONE: 9077 1076 FAX: 02 9076 0825 EMAIL: INFO@WATERSHEDDESIGN.COM.AU  
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CLIENT:	LOUISE & ALASTAIR HOOD	ADDRESS:	1A FLORIDA ROAD PALM BEACH NSW	JOB NO:	20013	DRAWING NO:	DA17
PROJECT:	HOOD HOUSE	DRAWING:	ELEVATION - SOUTH	DRAWN:	MC	ISSUE:	I
				CHECKED:	MK		
				SCALE:	1:100		





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Issue ID	Issue Name	Issue Date
H	Issue for Review	19/7/21
I	Issue for Development Application	19/7/21

**W** **WATERSHED DESIGN** architecture interiors landscapes

REGISTERED ARCHITECT: MARK KOROUK REGISTRATION NUMBER: 6221  
PHONE: 9077 1076 FAX: 02 9976 0825 EMAIL: INFO@WATERSHEDDESIGN.COM AU  
ADDRESS: LEVEL 1, 167 PITTWATER ROAD MANLY NSW 2095 AUSTRALIA

CLIENT: LOUISE & ALASTAIR HOOD  
PROJECT: HOOD HOUSE

ADDRESS: 1A FLORIDA ROAD PALM BEACH NSW  
DRAWING: ELEVATION - WEST

JOB NO: 20013  
DRAWN: MC  
CHECKED: MK  
SCALE: 1:100

DRAWING NO: DA18  
ISSUE: I

**APPENDIX 1****Clause 4.6 Exceptions to Development Standards – Height of Buildings****1A Florida Road, Palm Beach**

Clause 4.6 of the Pittwater Local Environmental Plan 2014 permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

*(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

*(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

*(c) to promote the orderly and economic use and development of land,*

*(d) to promote the delivery and maintenance of affordable housing,*

*(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

*(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*

*(g) to promote good design and amenity of the built environment,*

*(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

*(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*

*(j) to provide increased opportunity for community participation in environmental planning and assessment.*



The aims and objectives of the Pittwater LEP 2014 Clause 4.6 are as follows:

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

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

Under Clause 4.6(3) and (4) of LEP 2014, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

*(4)(a)(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,*

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

## **1. Environmental Planning Instrument Details**

### **1.1 What is the name of the environmental planning instrument that applies to the land?**

Pittwater Local Environmental Plan 2014

### **1.2 What is the zoning of the land?**

E4 – Environmental Living

### **1.3 What are the objectives of the zone?**

- *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*



**1.4 What is the development standard being varied?**

Cl 4.3 - Height of Buildings

**1.5 Under what clause is the development standard listed in the environmental planning instrument?**

Cl. 4.3 of the Pittwater Local Environmental Plan 2014

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

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

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

**1.7 What is the numeric value of the development standard in the environmental planning instrument?**

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.

**1.8 What is proposed numeric value of the development standard in your development application?**

The development proposes a maximum building height of 11.37 metres.

**1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?**

The percentage variation sought is 33.76% for the proposed development.





## NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

### 2.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

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

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

### 2.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe v Pittwater* [2007] NSW LEC 827 and demonstrate the following:





1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

### **3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7**

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

### **4 Zhang v City of Ryde**

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone



objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

### 5. Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

## 3. Consideration

The following section addresses the provisions of clause 4.6 of LEP 2014 together with principles established in the NSW Land and Environment Court Case Law outlined above.

**Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?**

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

### 3.1 Five (5) Part Test - *Wehbe v Pittwater*

#### 1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*

The objectives of the standard are:

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

#### Comment

The maximum height of the proposed upper awning is in effect a minor extension of the existing awning height at first floor level (roof ridge over existing deck) due to the change in shape from round to square at a steeper portion of the site. The modification of the existing form will provide the most architecturally pleasing result. Although the development will not



be seen from the street or be easily visible from neighbouring properties, it will be a positive contribution to the existing dwelling and visually enhance its existing form. Figures 1 and 2 below illustrate the existing and proposed breach (note: to the 10 metres height control as per Clause (2D) of the LEP, which is considered relevant in this instance (refer response to 1(e) below on page 8 of this report).

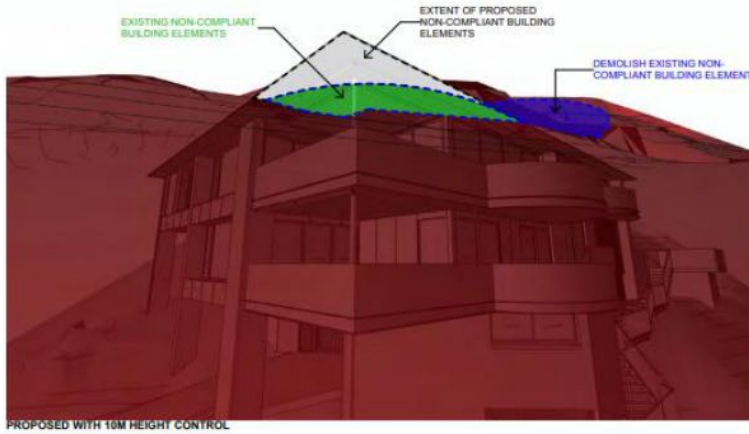


Figure 1: Excerpt from Watershed Drawing DA23 Issue I (Height Controls)

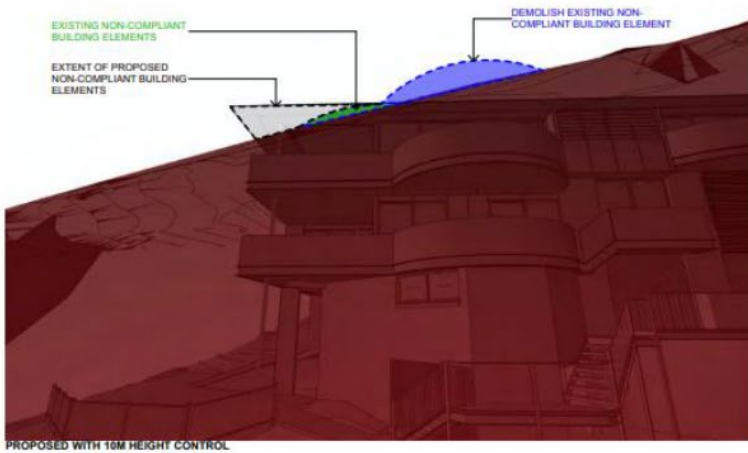


Figure 2: Excerpt from watershed Drawing DA23 Issue I (Height Controls)

It is therefore considered this objective is met, despite the numerical variation.



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

The subject site is surrounded by detached one, two and partial three storey dwellings, set on large lots with significant landscaping and native vegetation. The proposed development is a minor change to the existing development and remains compatible with the height and scale of surrounding development. The height variation proposed is due to the fall of the land and is consistent with the surrounds.

The resulting dwelling is considered to be compatible with the prevailing height of buildings and streetscape character within the locality, despite the non-compliance and will not be visible from Florida Road. It is considered this objective is met, despite the numerical variation.

*(c) to minimise any overshadowing of neighbouring properties,*

The proposed variation to height does not result in any unreasonable solar access impacts to adjoining properties. Given that compliant solar access is achieved, despite the height variation sought, it is considered the underlying objective of this clause has been satisfied.

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

A site visit has been undertaken and it is considered the proposed development will have no impact on views from the subject site or adjoining properties.

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

It is important to note that Clause 4.3 (2D) permits a height of 10 metres, if the slope of the building footprint exceeds 30% and other criteria are met. The architectural drawings submitted with the DA package demonstrate that the slope is calculated at 30%. However, as noted by Council in their pre-DA minutes, the proposed height of the building is 11.37 metres which would exceed this control and therefore the 8.5 metres height limit applies.

The overall existing and proposed breach are the result of the topography exceeding a 30% slope and the LEP acknowledges that a greater height (above the 8.5 metres) is acceptable in this instance. In this regard, the breach is considered minor, the objectives of Clause 4.3 Height of Buildings are achieved, the proposal does not result in any adverse amenity impacts or involve any additional cut or fill. These are the most relevant factors to consider on the matter of whether the variation is acceptable, albeit the proposal marginally exceeds the 10.0 metres referenced in Clause (2D) of the LEP.

In addition to this, the proposed works do not result in any alterations to the topography of the site and provide the continued use of decks that enjoy broad ocean views.



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

The proposed development is compatible with the residential surrounds and is an appropriate redevelopment of the existing dwelling. The design, colours and materials will not impact on the natural environment and the variation to the height control does not affect the natural environment, other than some minor pruning of nearby trees. The subject site is not a heritage item, is not located in a heritage conservation area and is not located in proximity to a heritage item.

***2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).***

This exception to development standards request does not rely on this reason.

***3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason.

***4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).***

This exception to development standards request does not rely on this reason.

***5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).***

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

**3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

There are sufficient grounds to permit the variation of the development standard. The





development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

#### **Context**

- The variation is very minor in area and applies to a very small component of the existing building (which currently does not comply with the height standard).
- The variation is due to the site topography (a slope in excess of 30%).
- The scale of the development is consistent with neighbouring dwellings and the development will not be visible from Florida Road.
- As such, the varied building height is considered to be reasonable and is consistent with clause 1.3(c), (d) and (g).

#### **Future Development**

- The built form proposed is consistent with other buildings in the locality,
- Amendments to achieve compliance would result in an architecturally less pleasing result with no gain for the site or neighbours.
- The refurbishment and alterations proposed demonstrates fulfillment of clause 1.3(a), (b), (c) and (g).

#### **Consistent with Zone Objectives**

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for continued shading of an existing deck, of a bulk and scale consistent with the locality. Compliance with the building height standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

#### **Natural Environment**

- The development to which the variation in height applies does not require any additional cut or fill, the removal of any trees and complies with Council DCP landscape area controls.
- The natural environment is not significantly affected by the departure to the development standard (pruning of vegetation only – see Arborist Report) and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

#### **Social and Economic Welfare**

- The variation to the building height will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community. All



services are existing, satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

#### **Appropriate Environmental Planning Outcome**

- The works proposed will not result in an overdevelopment of the site and satisfies the objectives of the zone and the objectives of the development standard, as detailed within this report,
- The variation does not result in a dwelling with excessive bulk.
- The variation will have no unreasonable amenity impacts to neighbours and the surrounds.

The variation to the building height and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain and largely presents with a compliant height and by supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, consistent with developments within the locality.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the building height variation.

#### **3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.**

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

#### **Zone – E4 Environmental Living**

##### **Objectives of zone**

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

Consistent. The proposal is for alterations and additions to an existing dwelling and will provide shade on an existing deck, within the footprint of the existing dwelling and architecturally pleasing design.

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

Consistent. The development will have no impact on any special ecological, scientific or aesthetic values.



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

Consistent. The development retains the existing single dwelling density and maximum height of the existing dwelling. The proposed height remains below the canopy in the locality and is consistent with surrounding dwellings.

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

Consistent. There will be no impact on riparian and foreshore vegetation and wildlife corridors.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effects as it represents a minor extension of the existing non-compliant awning height at first floor level and is consistent with surrounding development.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

**Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,**

The non-compliance will not raise any matter of State or Regional Significance.

**Clause 4.6(5)(b) the public benefit of maintaining the development standard,**

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

**Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence**

**How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.**

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

*(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*



- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Strict numerical compliance with the 8.5 metre standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

The proposed development for alterations and additions to an existing dwelling on land zoned E4 – Environmental Living is appropriate and reasonable for the following reasons:

- The variation is for a very small component of the structure,
- The proposed variation will allow for continued shading and amenity onsite,
- The built form proposed is consistent with other buildings in the locality,
- Amendments to achieve compliance would result in an architecturally less pleasing result with no gain for the site, neighbours or the streetscape.
- The objectives of the E4 zone can be met despite the numerical variation,
- There will be no unreasonable amenity or environmental impacts as a result of the non-compliance.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control, despite



the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.

The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the height variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.1, and therefore the merits of the proposed variation are considered to be worthy of approval.



**ITEM 3.4**

**MOD2021/0607 - 107 SEAFORTH CRESCENT, SEAFORTH -  
MODIFICATION OF DEVELOPMENT CONSENT DA 126/2016  
GRANTED FOR DEMOLITION OF EXISTING DWELLING,  
CONSTRUCTION OF A DWELLING, STUDIO, SWIMMING  
POOL, INCLINATOR, DRIVEWAY, CAR PARKING, GARAGE,  
CAR LIFT, RETAINING WALLS AND LANDSCAPING.**

**REPORTING MANAGER** Rodney Piggott  
**TRIM FILE REF** 2021/733932  
**ATTACHMENTS**  
1 Assessment Report  
2 Site Plan & Elevations

**PURPOSE**

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

---

**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

That Council, as the consent authority, **approves** Mod2021/0607 for Modification of Development Consent DA 126/2016 granted for demolition of existing dwelling, construction of a dwelling, studio, swimming pool, inclinuator, driveway, car parking, garage, car lift, retaining walls and landscaping on land at Lot 33 DP 5488, 107 Seaforth Crescent, Seaforth, subject to the conditions set out in the Assessment Report.

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0607
----------------------------	--------------

<b>Responsible Officer:</b>	Catriona Shirley
<b>Land to be developed (Address):</b>	Lot 33 DP 5488, 107 Seaforth Crescent SEAFORTH NSW 2092
<b>Proposed Development:</b>	Modification of Development Consent DA 126/2016 granted for demolition of existing dwelling, construction of a dwelling, studio, swimming pool, inclinators, driveway, carparking, garage, car lift, retaining walls and landscaping
<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>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Martyn Frank Colebrook
<b>Applicant:</b>	Martyn Frank Colebrook

<b>Application Lodged:</b>	17/08/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	25/08/2021 to 08/09/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

The application seeks to modify Development Application 10.2016.126.1 at 107 Seaforth Crescent, Seaforth.

The Modification Application 4.55(2) is referred to the Development Determination Panel, as the original application was determined by the Manly Council Development Assessment Unit (DAU) on 31 August 2016.

Whilst the proposal includes an increase in the Floor Space Ratio (FSR), the proposal maintains

compliance with the FSR requirement of 0.4:1 (324.8sqm) at 0.37:1(303sqm).

The proposed extension to the Studio terraces privacy screens do not comply with the 'Height of Buildings' Development Standard of 8.5m being up to 10.5m. Whilst the building height variation is significant, the proposed height is below the approved height of 14.6m and below the approved Studio RL of RL203.29. The non-compliance is largely unavoidable due to the significant slope of the site.

The proposal also involves minor variations to the built form controls under the MLEP and Manly Development Control Plan 2013 in relation to the foreshore building line.

However, it has been concluded that the proposal will not detrimentally impact on the amenity of neighbouring properties or the character of the Sydney Harbour foreshore.

The application was notified and no submissions were received.

The proposal represents a modernised and improved built form on the site and is compatible and consistent with surrounding residential developments.

Accordingly, the modified application is recommended for approval subject to conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks the approval for amendments to Development Application 10.2016.126.1.

The works include the following:

### Dwelling House

- Level 8 - room reconfiguration with the addition of bedroom, cupboards and wardrobes
- Level 7 - no change
- Level 5/6 - room reconfiguration with the addition of a new bathroom and WIR for Bedroom 1
- Level 5/6 - additional area of excavation to accommodate drainage
- Level 4 - additional area of excavation to accommodate a store room/services and drainage
- Level 3 - addition of a kitchenette for Bedroom 3
- Level 3 - inclinator landing to access Bedroom 3
- Level 3 - external stairs repositioned to pass under Bedroom 3
- The glass balustrading has been changed to black painted vertical steel balustrading throughout to reduce maintenance and glare
- Change of materials for the pergolas from steel to aluminium cladding

### Studio

- Level 1 - enclosing the undercroft Level 1 area to be an inside/outside gym with glazed doors
- Level 1 - an additional inclinator landing has been added for improved access to the gym/sauna/workshop on Level 1
- Level 2 - internal reconfiguration to provide new internal footprint with guest room and en-suite bathroom
- Increase in timber privacy screen to the roof terrace and Level 3 terrace

## **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 - Zone E3 Environmental Management
- Manly Local Environmental Plan 2013 - 4.3 Height of buildings
- Manly Local Environmental Plan 2013 - 6.2 Earthworks
- Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
- Manly Local Environmental Plan 2013 - 6.8 Landslide risk
- Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
- Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
- Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
- Manly Development Control Plan - 3.4.2 Privacy and Security
- Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot 33 DP 5488 , 107 Seaforth Crescent SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The subject property is commonly known as 107 Seaforth Crescents and legally known as Lot 33 in DP 5488.</p> <p>The site is located on the eastern side of Seaforth Crescent. The property is irregular in shape and has a frontage of approximately 10m to Seaforth Crescent, an average depth of 80m2 and an overall site area of 812m2.</p> <p>The property has a steep slope from east to west and includes a cross fall of approximately 52m.</p> <p>The surrounding area includes the harbour foreshore and in particular, Seaforth Bluff.</p>

The subject site is currently under construction for a multistorey dwelling house, studio, swimming pool, inclinor, driveway, carparking, garage, car lift, retaining walls and landscaped area.

The properties in the area are characterised by multi-storey dwellings on an escarpment which slopes steeply down to the Middle harbour foreshore area.

Map:



## SITE HISTORY

A search of Council's records has revealed the following relevant development applications:

- Development Application **10.2016.126.1** for the demolition of existing dwelling, construction of new dwelling house including detached entertainment area, studio, swimming pool, a deck, an inclinor, driveway, hardstand car parking, a garage, a mechanised car lift, retaining walls and landscaping was determined by the Development Assessment Unit of the 31 August 2016.
- Modification Application **Mod2018/0176** (1A) for the modification of Development Consent DA126/2016 granted for demolition and construction of a new dwelling house approved by Council under delegation on the 13 June 2018.
- Modification Application **Mod2018/0553** (1), to correct an error within the consent of Development Consent 126/2016 for the Demolition works, construction of a dwelling house including a studio, swimming pool and inclinor was approved by Council under delegation on the 23 October 2018.

### Changes in Development Consent timings

COVID-19 Legislation Amendment (Emergency Measures – Miscellaneous) Act 2020 (Amendment Act) was passed to amend both the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000 to allow extend timeframes for the lapsing of



development consents.

As a result, all development consents granted in the 2 year period from 25 March 2020 to 25 March 2022 will have a five-year lapsing period that cannot be reduced by the consent authority.

As a result, the extension to lapsing periods will provides additional time to physically commence works for this consent.

### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA10.2016.126.1, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under 10.2016.126.1 for the following reasons:</p> <p>The modifications do not significantly change the building envelope, streetscape appearance, car parking, drainage or landscape outcomes. Whilst there is additional areas of building height non-compliance via the installation of privacy screens, the variation is unavoidable due to the significant slope of the site. There are no significant changes to the built form controls, or change in the amenity of the occupants or surrounding sites. The spatial relationship of the proposed works to adjoining properties is maintained</p>

Section 4.55 (2) - Other Modifications	Comments
	with a similar compatible streetscape presentation that has been previously approved.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application 10.2016.126.1 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</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 in the original 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 in the original 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 in the original 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 in the original 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	(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.

Section 4.15 'Matters for Consideration'	Comments
economic impacts in the locality	<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 not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 25/08/2021 to 08/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

#### REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for modification to development consent 0126/2016, involving internal design amendments within the building and an additional inclinator landing within the landscaped area.</p> <p>The approved Landscape Plan remains applicable and no additional conditions or amendments to landscape conditions are required.</p> <p>Landscape Referral raise no objections to the modification proposal.</p>
NECC (Bushland and Biodiversity)	Council’s Biodiversity referrals team have no objections to the proposed modification subject to the conditions provided for the previous DA consent (DA2016/126).
NECC (Coast and Catchments)	No additional comments from original DA coastal referral.

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

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

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

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

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

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

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

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

A BASIX certificate has been submitted with the application (see Certificate No.717657M\_03 dated 25 July 2021). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 717657M\_03 dated 25 July 2021).

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

<b>Commitment</b>	<b>Required Target</b>	<b>Proposed</b>
<b>Water</b>	40	Pass
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	50	Pass

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

#### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

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

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposed modifications are considered to satisfy Clause 2,
- The proposed modifications are considered to satisfy Clauses 13 & 14,
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the



- matters listed in Clause 21 (a) to (i),
- The proposed modifications are considered to satisfy Clause 22(a) to (e),
  - The proposal has been designed and appropriately sited on the matters listed in Clause 25(a), (b) and (c), and
  - The proposal has been designed and appropriately sited to ensure protection of the matters listed in Clause 26(a),(b) and (c) (relating to maintenance, protection and enhancement of views).

The proposal is considered to be consistent with the above provisions of the Sydney Harbour Catchment Regional Environmental Plan 2005 (REP).

Given the scale and location of the proposed modified works on the subject site, a referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

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

Portions of the site are located within the Coastal Use Area and Coastal Environment Area as identified by State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP), and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the propose development, the consent authority can be satisfied of the following:

- The proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP
- The proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP
- The proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

### **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	Approved	Proposed	%	Complies
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				Variation	
Height of Buildings:	8.5m	12.3m (without pergola) 14.6m (with pergola) Detached entertainment area: 10.1m	Studio 10.2m Privacy Screen (Roof Terrace) 10.5m Privacy Screen (Level 3)	up to 23.5%	No
Special height provisions	Height not to exceed adjoining road	The proposed dwelling is below Seaforth Crescent.	No Change	-	Yes
Floor Space Ratio	0.4:1 324.8m <sup>2</sup> Site area:812sqm	0.18:1 150sqm*	FSR: 0.37:1 303sqm	-	Yes

*\*Incorrect FSR listed in the assessment report of 10.2016.126.1. FRS is approx.154sqm for the dwelling & 93.5sqm for the studio, being a combined total of 0.3:1 (247.5sqm).*

*Note: Whilst no FRS increase was noted in Mod2018/016 due to reconfiguration of Level 8, the FRS continued compliance being 0.35:1(282.2sqm).*

#### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.3A Special height provisions	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes

#### Detailed Assessment

##### Zone E3 Environmental Management

The modified design continues to be consistent with the following outcomes of the E3 Environmental Management zone:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores,*

- significant geological features and bushland, including loss of natural vegetation.*
- *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.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The modified development is found to have an acceptable impact on significant vegetation on the site, as assessed by Council's Landscape Officer and Biodiversity in the comments elsewhere in this report.

The documentation accompanying the modified application contains sufficient information for Council to be satisfied that the amended proposal, combined with existing applied conditions, will continue to protect and manage canopy trees and significant environmental features on the site and will be consistent with surrounding developments.

#### **4.3 Height of buildings**

Whilst the modification application will result in a Building Height that further exceeds the maximum permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

This application has been made under Section 4.55 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards.

Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted to a development application, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Nevertheless, an assessment in relation to the related objectives of the variation has been undertaken below:

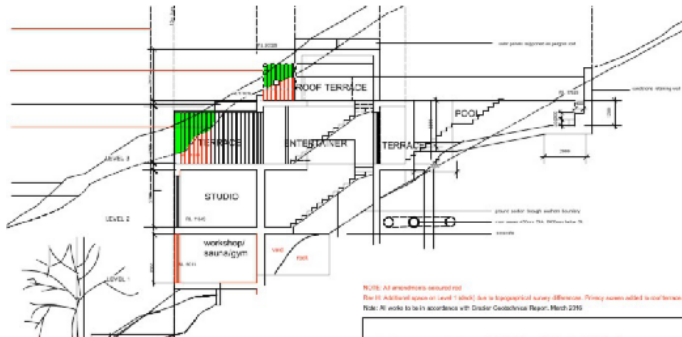
The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

(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 height of the additional privacy screens screening the Studio Level 3 and roof terrace contribute to further non-compliance with the 'Height of Building' control of 8.5m, at 10.2m - 10.5m (variation of up to 23%). The non-compliance in height is a direct result of the significant slope of the subject site. See Figure 1 below.



**Figure 1.** The additional building height of the privacy screens shown in green.

The additional building height is below the maximum buildings height of 14.6m approved via DA10.2016.126.1, and are predominantly beneath the approved maximum RL of the studio (RL203.29) as evident on the architectural plans. Overall, the proposal achieves a building height that is consistent with other residential dwelling on the downward slope of Seaforth Avenue. The proposed development integrates articulation via stepped wall planes, fenestration and changes in materials to reduce apparent building mass.

The proposal maintains previously approved side setbacks as well as appropriate modulation of building bulk through separated building form across the site. The spatial distance, elevation and use of high end materials will ensure the additional area of building height is not visually prominent and is consistent with the approved built form context, the area and the surrounding waterfront properties of the Manly locality.

As a result, the modifications to the studio are considered consistent with the approved development, and consistent with the prevailing bulk and scale surrounding the site or the desired future character of the locality.

The development satisfies this objective.

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

Comment:

The proposal involves additional privacy screens along the northern and southern elevations of the Studio terraces.

The privacy screens do not result in any unreasonable additional bulk on the Studio building, with the screens actually improving the privacy levels to the neighbouring sites. Accordingly, there are no further adverse amenity impacts on the adjoining particularly as there is no amendment to any setback distance, and no proposed window openings on the side elevations of the Studio.

As a result, the additional height from the privacy screens is not considered to be overbearing when viewed from adjacent land, and minimises opportunities to overlook adjacent properties.

The additional height of buildings does not involve an increase in bulk or density that could lead to obscuring landscape or Sydney harbour water features.

The development satisfies this objective.

**c) to minimise disruption to the following:**

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

Comment:

The non-compliance along the upper edge of the privacy screens does not impact the viewing angle from the properties to the north, No.105 Seaforth Avenue or the south No. 109 Seaforth Avenue. The sweeping range of views available from the internal areas and terraces of both properties which remain intact.

Therefore, the height non-compliance does not result in any loss of views to, from, or between public or private spaces.

- 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 solar impacts of the privacy screens do not impact the habitable rooms of the adjoining properties and public open spaces.

The development satisfies this objective.

- 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 proposal maintains a similar presentation of building bulk with no amendment to the previously approved area of open space and landscaping. As such, the proposal will maintain an appropriate visual relationship between new development and the existing character and landscape of the area.

The development satisfies this objective.

**What are the underlying objectives of the zone?**

The underlying objectives of the E3 Management Zone zone are:

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

Comment:

The proposal includes privacy screens within the existing footprint of the studio area. The privacy screens do not impact on the vegetation or environmental features of the site. The proposal will maintain the previous measures to ensure ecological, scientific, cultural and aesthetic protection.

As such, the development is consistent with this stated objective.



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

Comment:

The proposal continues to be compliant with the numerical requirement for FSR under the Manly LEP 2013. The landscaping design will preserve nominated existing trees on the site.

The landscaping softens and screens the built form when viewed from the neighbouring sites and the Middle Harbour water foreshore.

As such, the development is consistent with this stated objective.

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

Comment:

The modified design has no unreasonable impact on existing tree canopies than what was previously approved. Therefore, the size and scale of the modified proposal and retention of nominated vegetation will ensure the proposal will not not dominate scenic qualities of the Middle Harbour foreshore.

As such, the development is consistent with this stated objective.

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

Comment:

The proposal will be a low-impact development and has been designed to respond sensitively to the steep topography. The amended proposal will provide the occupants and neighbouring sites an increased level of amenity without causing unreasonable impacts to adjoining neighbours or to the site itself.

The development does not result in any adverse impact on specific retained trees.

As such, the development is consistent with this stated objective.

- ***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:

The proposals previously approved landscaping will be maintained and is compliant with the landscaped open space control required by the Many DCP 2013.

As such, the development is consistent with this stated objective.

- ***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 modified design will be of a similar bulk and scale to the existing Studio and surrounding dwellings. The privacy screen design has high quality natural finishes responding to the natural natural vegetated context in which the site is located. Landscaping will continue to be retained and will screen and soften the proposed built form.

The development will retain the existing foreshore vegetation and continue to maintain the existing trees for the wildlife corridors.

Privacy, amenity and solar access are provided for within the modified development.

As such, the development is consistent with this stated objective.

**Conclusion:**

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Management zone.

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

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

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

Comment:

In this circumstance, providing flexibility to the '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 an addition in 'Height of Building' 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.

**Conclusion:**

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

Notwithstanding, Council is satisfied that the modified development is substantially the same development as previously approved and whilst no assessment against the objectives of Clause 4.6 is required it has been determined that the development satisfies the underlying objectives of Clause 4.3

Height of Buildings under MLEP 2013 and the variation can be supported on its merit.

## 6.2 Earthworks

A Geotechnical Assessment, prepared by Crozier Geotechnical Consultants, dated 9 August 2021 was

submitted with the application. This report and its recommendations are included within the draft conditions to ensure there are no adverse impacts to surrounding properties resulting from the additional excavation.

Accordingly, Councils Landscape and Biodiversity officers have concluded that the impact of the earthworks will not unreasonably impact or disrupt vegetation on the property.

### 6.5 Terrestrial biodiversity

Councils Landscaping and Biodiversity officers have assessed the modified proposal and consider the impact of the additional development on the existing biodiversity to be reasonable, subject to the imposed conditions within **126/2016**.

### 6.8 Landslide risk

A Geotechnical Assessment, prepared by Crozier Geotechnical Consultants, dated 9 August 2021 was submitted with the application. This report and its recommendations are included within the draft conditions to ensure there is no adverse impacts to the surrounding properties resulting from the proposal on sloping land.

### 6.9 Foreshore scenic protection area

The proposed amendments are supported as the footprint of the development is consistent with the footprint (area of disturbance) associated with the approved dwelling, the proposed works are not visually dominant, and are consistent with the design criteria of the control.

Overall, the proposed development will achieve consistency with the provisions of this control.

### 6.10 Limited development on foreshore area

The additional inclinator platform area are within the foreshore area provide access to Level 1 of the Studio area, also located within the foreshore area. The platform is minor in size at approximately 2.8sqm, and is considered to be consistent with the purposes provided in Clause 6.10(2c). Further detail is included below under DCP Clause 4.1.4.5.

Overall, the proposed development will achieve consistency with the provisions of this control.

### Manly Development Control Plan

#### Built Form Controls

Built Form Controls - Site Area: 814sqm	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	1150m <sup>2</sup> of site area per dwelling (1 dwelling)	1 dwellings	No Change	Yes
4.1.2.1 Wall Height	N: 8m (based on gradient 1:4)	11.4m	No Change	No*
	S: 8m (based on gradient 1:4)	11.8m	No Change	No*
	E: 8m (based on gradient 1:4)	7.3m	No Change	Yes

	W: 8m (based on gradient 1:4)	5.9m	No Change	Yes
4.1.2.2 Number of Storeys	2	4	No Change	No*
4.1.4.1 Street Front Setbacks	6m or streetscape	6m and streetscape	No Change	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North 2.6m	3.8m**	No Change 1.5m Dwelling 3.7m Studio 0.9m Inclinorator Track	No*
	South 2.6m	3.9m**	No Change 1.1m - 1.4m Dwelling 1.7m Studio	No*
4.1.4.4 Rear Setbacks	8m	13m	11m - 14m Gym 12.2m - 13m Inclinorator Landing	Yes
4.1.4.5 Foreshore Building Lines and Foreshore Area	Approximately: 20m (north-western boundary) 16m (south-eastern boundary)	12m to deck 15m to terrace	11m - 14m Gym 12.2m - 13m Inclinorator Landing	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	>60% (>500m <sup>2</sup> )	>60%	Yes
	Open space above ground 25% of total open space	200sqm	No Change	
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	>40% (>300m <sup>2</sup> )	>40%	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	7.2m	No Change	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	East: 0m West: 2.6m	No Change	Yes
	1m curtilage/1.5m water side/rear setback	2.005m/ 2.4m (via Mod)	No Change	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	2 spaces	Yes

\* Previously approved via 10.2016.126.1

\*\* Incorrect setbacks listed in the assessment report of 10.2016.126.1

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes

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 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
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	No	Yes

#### Detailed Assessment

##### **3.1.1 Streetscape (Residential areas)**

The Dwelling and Studio amendments will be located well below the street level and are not visually dominant from the public domain from what was previously approved, see photo 1 below.





**Photo 1:** View of the subject site from the Seaforth Crescent streetscape.

The amendments are of a similar bulk and scale as the approved built form for the site, with a modernised and updated appearance and improved site access. The proposed design changes will improve the visual amenity for the surrounding properties.

As a result, the proposed works demonstrate compliance with the objectives of the streetscape control.

### 3.4.2 Privacy and Security

The original development was approved with non-compliant setbacks to the northern and southern side boundaries, inconsistent with the minimum setbacks prescribed by the MDCP 2013.

These reduced setbacks were supported due to the specific context of the site (steep topography) and in circumstances where the amount and size of windows oriented towards the side boundary was minimised, and specific windows servicing the Studio where conditions to be of opaque glazing in order to maximise visual privacy for the future occupants and adjoining property owners.

The subject modification application seeks to amend the proposal in this respect, with one new window, privacy screens introduced along the side elevations, as well as one (1) repositioned and two (2) new inclinator landing areas.

The window in question is minor in size and services a new store room area. The window is setback 1.5m from the southern side boundary, and is not located directly opposite windows of the adjoining property and/or areas of private open space.

The external privacy screens are to a height of 1.7m above the finished floor level of terraces servicing the studio. The privacy screens are shown (in Proposed Split Section AA on Drawing No. 23A, dated June 2021) to comprise of vertical louvres that are angled towards Middle Harbour, which would restrict a view directly across neighbouring sites, but would still permit a view in a north-east direction. The inclinator upper stopping platforms will adjoin the Dwelling house and Studio areas where a degree of overlooking currently exists to the adjoining sites. The location of the stopping stations will no create any additional overlooking impacts, and displays no unreasonable overlooking particularly to the habitable open space of the southern adjoining site.

Overall, the proposed development is not consistent with the objectives of this development control, as follows:

- *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 modified proposal seeks to integrate further privacy screens into the design solutions. The screens proposed appropriately respond to the context of each individual terrace space, restrict and mitigate direct overlooking, and improve upon the internal amenity of the development.

The additional window servicing the new storeroom area is setback 1.5m from the southern side boundary, and is not located directly opposite windows of the adjoining property and/or areas of private open space. No further mitigation measures are required.

The new inclinator upper stopping station will adjoin Level 3 of the Dwelling, and Level 1 of the Studio where a degree of overlooking currently exists to the northern adjoining site due to the significant slope, see photo 2 & 3 below.



**Photo 2:** Relationship of the upper additional and repositioned inclinator landings to the southern adjoining property.



**Photo 3:** Relationship of the inclinator platform servicing Level 1 of the Studio to the southern adjoining property.

*subject site.*

The location of the upper stopping stations will no create any additional overlooking impacts, and displays no unreasonable overlooking to the habitable or open space of the northern adjoining site.

- *To increase privacy without compromising access to light and air.*

Comment:

The modified development increases privacy levels for the adjoining properties and occupants of the proposed development, noting that the design of the screens further mitigates overlooking of adjoining properties, and addresses any amenity impacts associated with the limited proximity between adjoining developments.

- *To balance outlook and views from habitable rooms and private open space.*

Comment:

The screens proposed to the bedrooms of the development comprise fixed vertical louvres. When standing back within each terrace area, the screen will obscure the line of site to the adjoining properties and is considered to be a improved outcome for the development via creating higher levels of amenity.

The inclinator landing areas, whilst elevated are to be constructed of galvanized see through grating, as a result does not create any additional visual and acoustic privacy impacts than have been previously approved.

- *To encourage awareness of neighbourhood security.*

Comment:

The development proposes sufficient windows and open balcony areas to allow passive surveillance and encouraging 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.

#### **5.4.1 Foreshore Scenic Protection Area**

The inclusion of the inclinator landing, servicing Level 1 of the Studio, is located within the foreshore building setback area.

Its important to note that the Studio was approved wholly within the foreshore building setback area, meaning it is not possible to locate the landing outside this area.

The site currently has inclinator landings approved from the front setback right down to the lower foreshore area. Additional landings are reasonable in this instance due to the exceptionally steep site that demonstrates a cross fall of over 52m from the front setback to the the rear of the site and difficulty with site access.

The additional inclinator platform is minor in size (2.7sqm) and will provide improved access. The

landing does not remove any required soft landscaping area, or identified trees required to screen and soften the proposal.

Due minor nature of the addition, the landing will not have an unreasonable impact on the scenic amenity of the foreshore. The inclinator landing is a minimal structure that sits adjoining the built form of Level 1, and is consistent with the previously approved inclinator stopping landings and other inclinator within the immediate area.

The open carriage will predominately be located at the stopping stations adjoining the Dwelling and Studio levels. Therefore, the carriage will continue to have a minimal impact on the scenic quality of the site when viewed from the waterway.

The inclinator landing will enhance the scenic amenity of the foreshore by allowing greater, and safer access to the Studio and Middle Harbour, while continuing to maintain a landscaped setting.

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

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

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **POLICY CONTROLS**

##### **Northern Beaches Section 7.12 Contributions Plan 2021**

Section 7.12 contributions were levied on the Development Application.

#### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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

This Modification Application has been assessed having regards to the original approval at 107 Seaforth Crescent, Seaforth.

#### Public Exhibition

The public exhibition of the application resulted in no submissions.

#### Referrals

The application was referred to three (3) internal departments with no objections raised subject to the conditions of the original proposal being maintained as part of the consent.

#### Assessment of the Proposal

The proposal complies with the objectives of the E3 Environmental Management zone.

The assessment of the proposed development against the provisions of MLEP 2013 found that the proposal does not comply with the 'Height of Buildings' Development Standard under the MLEP 2011 which permits a maximum building height of 8.5m, where the proposal displays a height of up to 10.5m, a 23.5% variation to the control.

Whilst the building height variation is significant, the non-compliance is largely unavoidable due to the steep slope of the site and does not result in any unreasonable impacts to surrounding residential properties.

In addition, the assessment of the proposed development against the provisions of the Manly DCP 2013 has found that the proposal does not comply with certain controls, being the foreshore building line. Given the constraints on the development by virtue of the escarpment location, the significantly sloping topography and the presence of significant environmental features, some flexibility in applying these controls is necessary. There will not be any unreasonable amenity impacts on adjoining properties and the proposal will be consistent with the character of Seaforth Crescent and the Middle Harbour foreshore locality.

#### Recommendation - Approval

In summary, the proposal is recommended for approval as the siting and design of the amended design changes are site responsive and logical and will not result in any unreasonable amenity impacts on surrounding developments or the streetscape and foreshore character.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

### **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0607 for Modification of Development Consent DA 126/2016 granted for demolition of existing dwelling, construction of a dwelling, studio, swimming pool, inclinor, driveway, carparking, garage, car lift,



retaining walls and landscaping on land at Lot 33 DP 5488,107 Seaforth Crescent, SEAFORTH, subject to the conditions printed below:

**A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:**

The development must be carried out in compliance with Development Application 10.2016.126.1 dated 31 August 2016, Modification Application Mod2018/0553 dated 23 October 2018 and Modification Application Mod2018/0176 dated 13 June 2018 and with the following:

a) Modification Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Proposed Site Section AA 03D	June 2021	Colebrook Architects
Main House Level 8 06M	June 2021	Colebrook Architects
Main House Level 5 & 6 08J	June 2021	Colebrook Architects
Main House Level 4 09H	June 2021	Colebrook Architects
Main House Level 3 10H	June 2021	Colebrook Architects
Pool House/Studio Level 2 12F	June 2021	Colebrook Architects
Pool House/Studio Level 1 13H	June 2021	Colebrook Architects
Main House Section AA 18J	June 2021	Colebrook Architects
Pool House Studio AA 23H	June 2021	Colebrook Architects

<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>
Geotechnical Assessment	9 August 2021	Crozier Geotechnical Consultants

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

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

**B. Modify Condition No 52 (6AP02) to read as follows:**

**Approved Land Use**

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

A dwelling house is defined as:

*“dwelling house means a building containing one dwelling, an attached dwelling or a semi-detached*

*dwelling, but does not include any part of the building that is ancillary development, attached development, detached development or exempt development under this Policy.  
Note-Dwelling houses are a type of residential accommodation—see the definition of that term in this Dictionary.”*

(development is defined by the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 Dictionary)

A studio is defined as:

*“detached studio means a habitable building that is used for purposes ancillary to a dwelling house such as a home office, entertainment area, art studio or guest room and—*

- (a) is established in conjunction with a dwelling house, and*
- (b) is on the same lot of land as the dwelling house, and*
- (c) is separate from the dwelling house, and*
- (d) is not used as a separate dwelling house, and*
- (e) does not contain any cooking facilities.*

(development is defined by the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 Dictionary)

There is no approval for detached Bedroom 3, and the Studio to operate as separate dwellings.

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

The scheme is designed to fit into, and take advantage of its rain forest environment. The intention is to retain as much of the natural vegetation and as many of the trees as possible. The house sits 'lightly' on the site, mostly above ground level. The footprint has been kept deliberately small so as not to dominate the site. It is to be built in three parts to reduce the visual impact and take advantage of this special site. The main living area is at the top of the site, to take advantage of the spectacular views over Sailors Bay and Quakers Hat Bay. A small tree house bedroom is set low down in front of an interesting cliff face, below a tree. It is accessed via a raised walkway. It is offset to avoid overlooking the neighbouring house, No 109. The lower part of the house provides the entertainment area. A small pool utilises the fall of the sloping site and creates minimal impact to the geology. The Entertainer/pool house is sited to avoid overlooking No 109. The pool is screened with vegetation to avoid overlooking the neighbour's garden. It is set lower down the slope than No 105 and does not interfere with its views or privacy. The view of the Entertainer/pool house from the harbour is partly obscured by the existing trees. The existing bird of paradise tree will have to be removed, but will be replaced. A privet and three palm trees will also have to be removed. The proposed inclinator provides access to the Entertainer and the bottom of the garden. It is proposed to install the inclinator on the north side of the site as the rail avoids more trees. Three trees need to be cut below the height of the inclinator rail, but selected branches will be allowed to regrow away from the rail.

TOTAL FLOOR AREA

Main house	
garage/storero	42
living	42
living/bed 1	65
bed 2	35
bed 3	16
sub total	204
Entertainer	84
total	288sqm

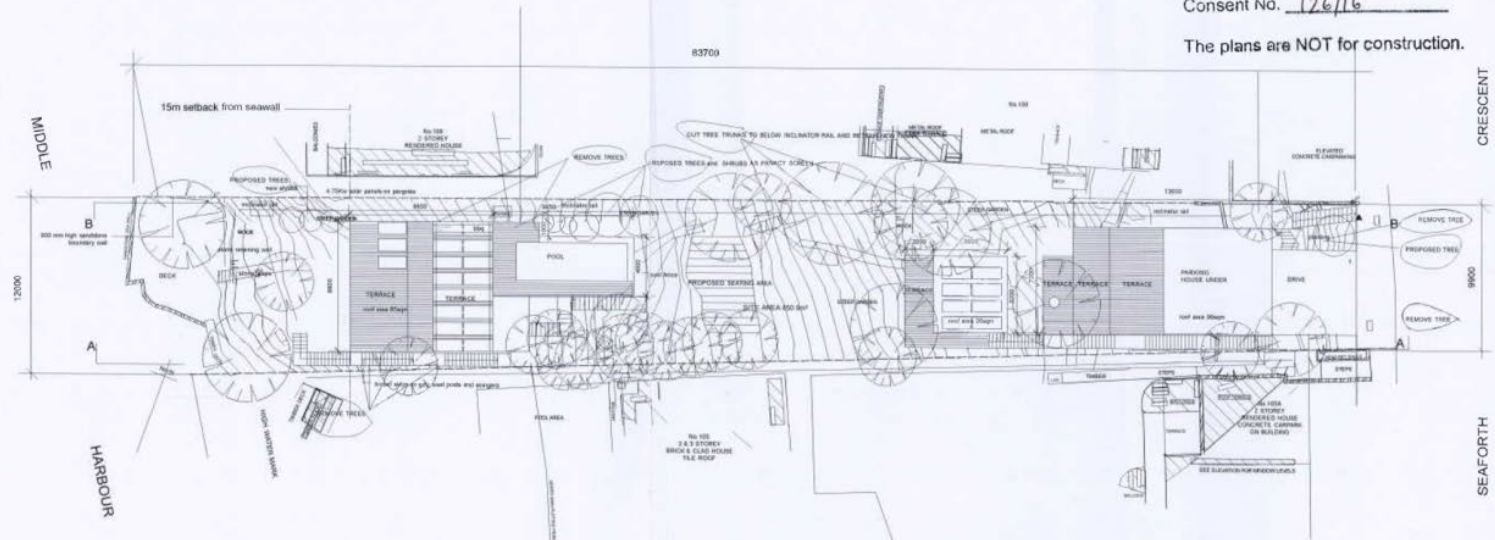
PLOT RATIO  
Max permissible build/plot ratio  
40%

Proposed build/plot ratio 34%

**NORTHERN  
BEACHES  
COUNCIL**

These plans relate to Development  
Consent No. 126/16

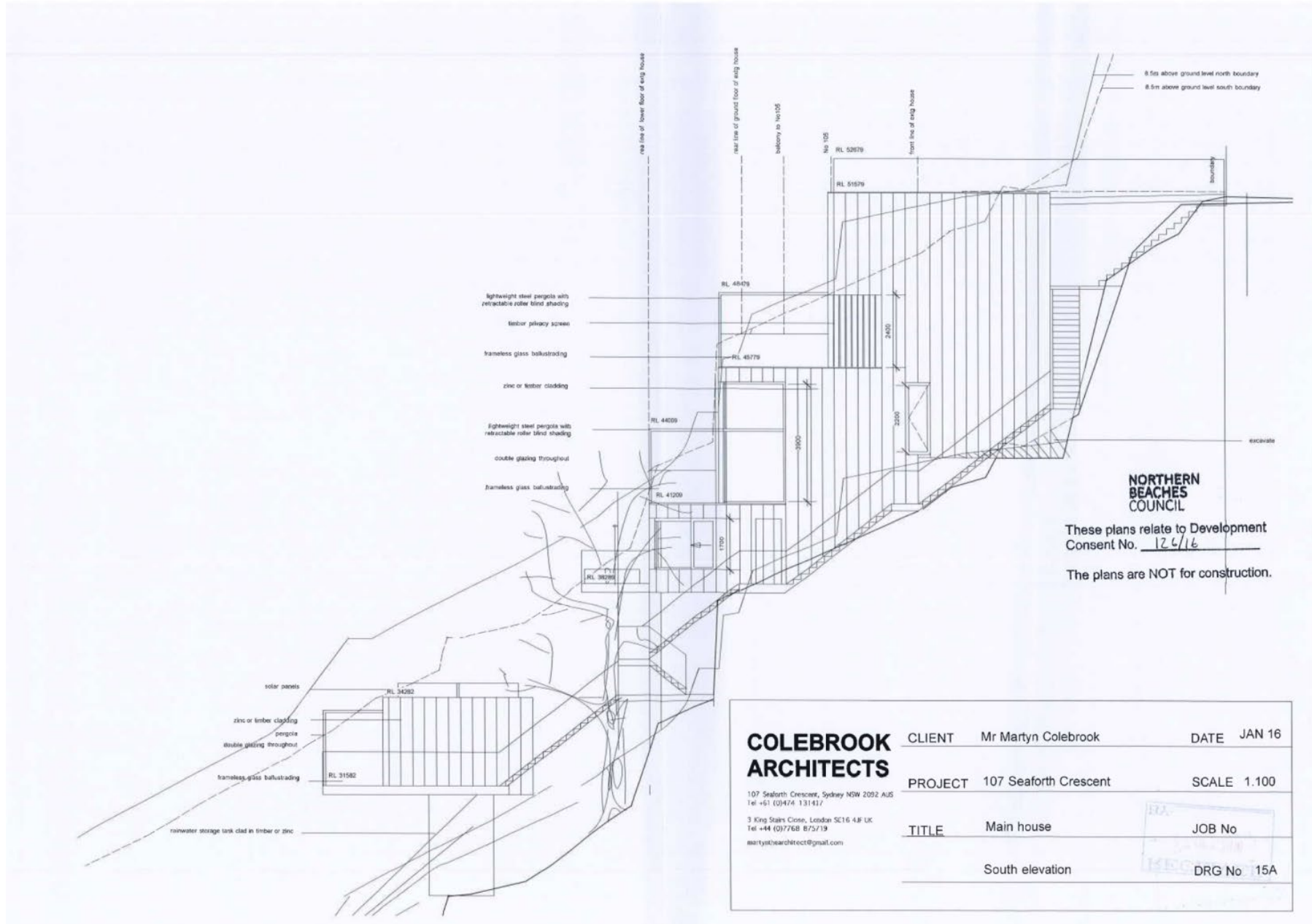
The plans are NOT for construction.



<p><b>COLEBROOK ARCHITECTS</b> 107 Seaforth Crescent, Sydney NSW 2097 AUS Tel +61 (0)2 911 1311</p> <p>3 King Street, London SE16 4JF UK Tel +44 (0)7760 873719 martyn@architect@gmail.com</p>	CLIENT	Mr. Martyn Colebrook	DATE	Jan 16
	PROJECT	107 Seaforth Crescent	SCALE	1:200
	TITLE	Proposed site plan	JOB No	
			Dwg No	02A

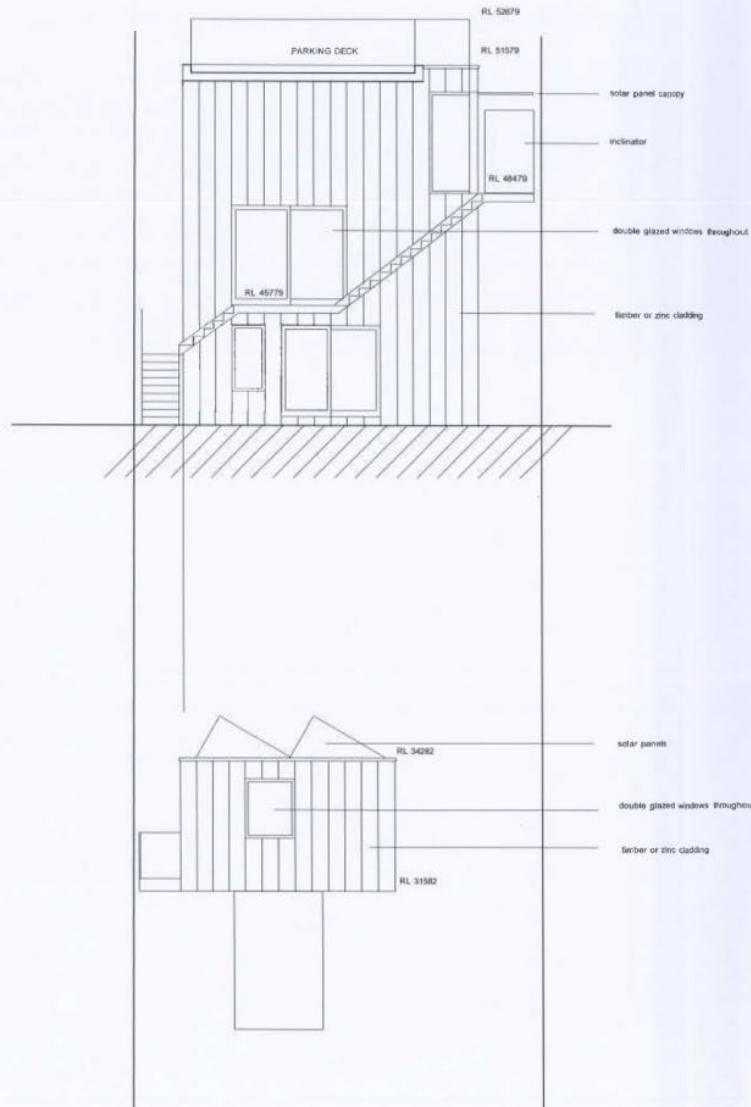






<b>COLEBROOK ARCHITECTS</b> 107 Sealorth Crescent, Sydney NSW 2092 AUS Tel +61 (0)474 131417 3 King Stairs Close, London SE16 4JF UK Tel +44 (0)7768 875719 martyn@architect@gmail.com	CLIENT	Mr Martyn Colebrook	DATE	JAN 16
	PROJECT	107 Sealorth Crescent	SCALE	1:100
	TITLE	Main house	JOB No	
		South elevation	DRG No	15A





NORTHERN  
BEACHES  
COUNCIL

These plans relate to Development  
Consent No. 176/16

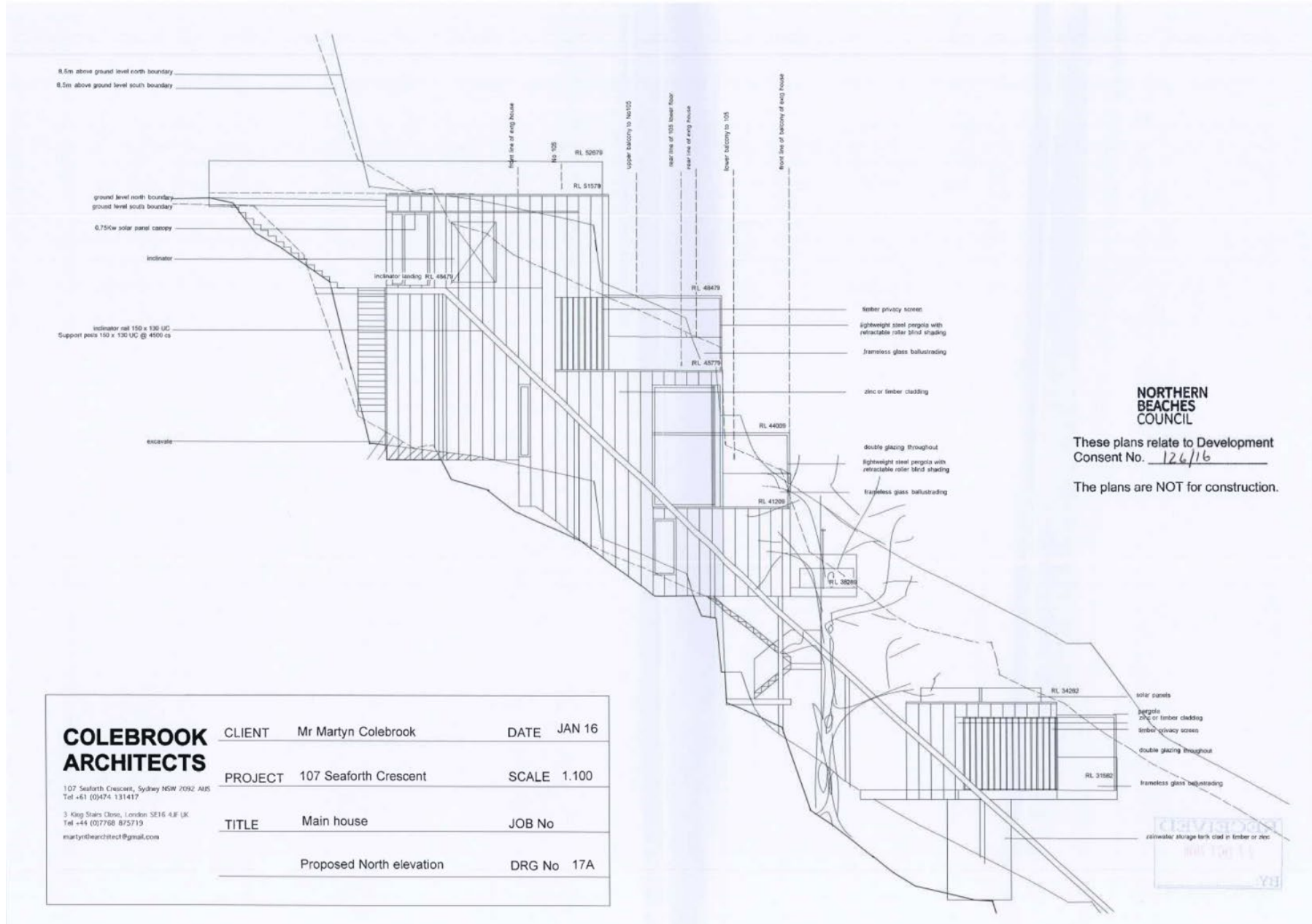
The plans are NOT for construction.

**COLEBROOK  
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martyn@beachitects@gmail.com

CLIENT	Mr Martyn Colebrook	DATE	JAN 16
PROJECT	107 Seaforth Crescent	SCALE	1:100
TITLE	Main house	JOB No	
	Proposed East elevation	DRG No	16A



**NORTHERN BEACHES COUNCIL**  
These plans relate to Development Consent No. 126/16  
The plans are NOT for construction.

<p><b>COLEBROOK ARCHITECTS</b></p> <p>107 Seaforth Crescent, Sydney NSW 2092 AUS Tel +61 (0)474 131417</p> <p>3 King Stairs Close, London SE16 4JF UK Tel +44 (0)7768 875719 martyn@architect@gmail.com</p>	CLIENT	Mr Martyn Colebrook	DATE	JAN 16
	PROJECT	107 Seaforth Crescent	SCALE	1.100
	TITLE	Main house	JOB No	
		Proposed North elevation	DRG No	17A