



northern
beaches
council

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

Notice is hereby given that the Northern Beaches Planning Panel will be held via Teleconference on

WEDNESDAY 20 APRIL 2022

Beginning at 12:00pm for the purpose of considering and determining matters included in this agenda.

A handwritten signature in black ink, appearing to read 'Peter Robinson'.

Peter Robinson
Executive Manager Development Assessment

Quorum

A quorum is three Panel members

Conflict of Interest

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 20 April 2022

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 6 April 2022	
3.0	CATEGORY 3 APPLICATIONS	
4.0	PUBLIC MEETING ITEMS.....	5
4.1	DA2021/1801 - 55 Woolgoolga Street, North Balgowlah - Demolition works and construction of a dwelling house, including a swimming pool and driveway	5
4.2	DA2021/2446 - 60 Starkey Street, Forestville - Alterations and additions to a dwelling house.....	81
5.0	NON PUBLIC MEETING ITEMS.....	105
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.	
5.1	DA2021/2409 - 9 Eustace Street, Manly - Alterations and additions to a residential flat building	105
5.2	DA2021/2588 - 69 Evans Street, Freshwater - Alterations and additions to a residential flat building	173

ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Local Planning Panel acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 6 APRIL 2022

RECOMMENDATION

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 6 April 2022 were adopted by the Chairperson and have been posted on Council's website.

4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2021/1801 - 55 WOOLGOOLGA STREET, NORTH BALGOWLAH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE, INCLUDING A SWIMMING POOL AND DRIVEWAY
AUTHORISING MANAGER	Phil Lane
TRIM FILE REF	2022/222768
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants 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.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/1801 for Demolition works and construction of a dwelling house, including a swimming pool and driveway on land at Lot 23 DP 23447, 55 Woolgoolga Street, North Balgowlah, subject to the conditions set out in the Assessment Report.
-

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1801
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 23 DP 23447, 55 Woolgoolga Street NORTH BALGOWLAH NSW 2093
Proposed Development:	Demolition works and construction of a dwelling house, including a swimming pool and driveway
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Martin Leslie Pryor Andrea Elizabeth Pryor
Applicant:	Ursino Architects
Application Lodged:	07/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	18/10/2021 to 01/11/2021
Advertised:	Not Advertised
Submissions Received:	11
Clause 4.6 Variation:	4.3 Height of buildings: 27.9%
Recommendation:	Approval
Estimated Cost of Works:	\$ 984,500.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a dwelling house, including a swimming pool and driveway.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to receiving 11 submissions by way of objection.

Concerns raised in the objections predominantly relate to stormwater management, building height, bulk and scale, privacy impacts and overshadowing.

Critical assessment issues included consideration of a 27.8% variation to the building height development standard, significant numerical non-compliance with the wall height and building envelope control requirements and compliance of the proposed stormwater management plan with the requirements of Council's Water Management for Development Policy.

The non-compliance with the building height and built form controls generally arise due to the steep slope (30.2%) of the site. Approximately 41m² (11.7%) of the total roof area exceeds the building height limit where the dwelling transitions across the steepest part of the site.

This report concludes with a recommendation that the NBLPP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the demolition of existing structures and construction of a new dwelling, including a swimming pool.

As outlined in the submitted Statement of Environmental Effects, the proposed dwelling contains the following elements:

Garage Floor Plan

The existing antiquated carport and driveway access arrangement is replaced with integrated garage accommodation for 2 vehicles accessed via driveway of compliant gradient from the Woolgoolga Street frontage.

The garage accommodation has been designed with a disabled share zone to enable wheelchair access by the owner of the property. New stairs located within the road reserve provide access from street level down to the entrance pathway leading to the front door of the property.

This level also contains the formal entry foyer with lift and stair access to the level below.

Second Floor Plan

This internally accessed floor plate contains a living room with kitchenette, 2 bedrooms, study and bathroom. The living room and bedroom open onto a south facing deck with access to the rear yard provided via a deck and external stairs down the western boundary of the property. This floor plate has been designed to be wheelchair accessible.

First Floor Plan

This internally accessed floor plate contains 3 bedrooms, a family room, study and bathroom.

Ground Floor Plan

This internally accessed floor plate contains an open plan kitchen, living and dining room store/services area, laundry and powder room. The living areas open onto a rear south facing patio and inground swimming pool beyond.

AMENDED PLANS

During assessment, the applicant submitted amended architectural and stormwater management plans in response to several concerns raised by Council. Details regarding the specific plan amendments is included in the Application History section of this report.

In accordance with the provisions of the Northern Beaches Community Participation Plan, as the amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain, re-notification of the application was not required. However, due to the scale of the proposal, all objectors were informed about the submission of the amended plans and were given the opportunity to provide comment on the amendments.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 23 DP 23447 , 55 Woolgoolga Street NORTH BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Woolgoolga Street. The site is irregular in shape with a frontage of 13.34m along Woolgoolga Street and a depth of maximum 57m. The site has a surveyed area of 926.4m ² . The site is located within the R2 Low

	<p>Density Residential zone and accommodates a single storey residential dwelling and a detached double carport.</p> <p>The site falls approx. 13m from the north towards the south with an average slope of 30.2% within the building footprint. The area between the dwelling and carport has the steepest slope and the rear yard falls gently towards the rear boundary.</p> <p>The site contains a large grassed rear yard with several trees and garden areas throughout. Several rock outcrops and embankments are located forward of the dwelling.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings.</p>
--	--

Map:



SITE HISTORY

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

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

APPLICATION HISTORY

During assessment, Council raised several concerns with the proposal that needed to be addressed before support could be given to the application.

On 8 December 2021, Council issued a letter to the applicant outlining concerns regarding non-

compliance with the requirements of the building height, wall height and building envelope controls, and development engineering issues regarding the proposed stormwater management plan and driveway gradient.

On 11 February 2022, Council received amended plans and documents from the applicant aimed at addressing the concerns outlined above. The following changes were made to the built form of the proposed dwelling to minimise impact to adjacent properties:

- Reducing the bulk and scale of the first and second floors by partially increasing the setback to the east side boundary with new floor area to the north and west
- Reduce the extent of the building height non-compliance to the second floor roof by removing the roof above the deck and revising the floor plate

It was considered that these design amendments adequately addressed Council's built form concerns. Adequate details regarding the proposed driveway gradient was also received. However, development engineering issues relating to stormwater management were not resolved due to continued inconsistency with Council's Water Management for Development Policy.

On 14 February 2022, all objectors were informed of the receipt of the amended plans and documentation and were provided the opportunity to submit additional or revised comments.

On 28 February 2022, Council received revised details relating to the proposed stormwater management plan. Council's Development Engineer was able to support the revised stormwater management plan, subject to conditions.

On 5 April 2022, Council's Development Assessment and Development Engineering Staff along with the applicant and their architect and stormwater consultant attended 10 Urunga Street and 8 Dorringo Avenue to explore the possibilities for stormwater drainage easement.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration	Comments
<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)</p>	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended architectural plans and stormwater management plan.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>

Section 4.15 Matters for Consideration	Comments
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 18/10/2021 to 01/11/2021 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 11 submission/s from:

Name:	Address:
Annabel Susan Semedo Angelo Renato Rodrigues Da Guerra Semedo	6 Dorrigo Avenue NORTH BALGOWLAH NSW 2093
Mr Yoel Toledano	12 Urunga Street NORTH BALGOWLAH NSW 2093
Valerie Moushigian	8 Dorrigo Avenue NORTH BALGOWLAH NSW 2093
Paul Anthony Masluk	10 Urunga Street NORTH BALGOWLAH NSW 2093
Mr Otto Herman Noe Mrs Lindsay Irene Jewell	10 Dorrigo Avenue NORTH BALGOWLAH NSW 2093
Ann Carol Newton Mr Andrew Dawes	15 Urunga Street NORTH BALGOWLAH NSW 2093
Mrs Elizabeth Romanis Dreyer	17 Urunga Street NORTH BALGOWLAH NSW 2093
Steven Paul Williams Melanie Kim Williams	7 Urunga Street NORTH BALGOWLAH NSW 2093
Mrs Abigail Jane Kuys	13 Urunga Street NORTH BALGOWLAH NSW 2093
Withheld	NORTH BALGOWLAH NSW 2093
Blackwattle Planning	Address Unknown

The following issues were raised in the submissions:

- Stormwater management and disposal
- Building height, bulk and scale
- Privacy
- Overshadowing
- Tree removal
- Revised technical reports

It is noted that one submission received is from a family member of a Member of Parliament.

The above issues are addressed as follows:

- **Stormwater management and disposal**

The submissions raised concerns that the proposed stormwater management plan and disposal system is inadequate and will impact upon downstream properties. Some adjacent property owners have expressed willingness to negotiate a stormwater drainage easement across their property to drain stormwater.

Comment:

The applicant has revised the proposed stormwater management plan and disposal system to the satisfaction of Council's Development Engineer. While it is acknowledged that a downstream property owner is willing to provide a stormwater drainage easement across their land, the applicant's stormwater engineer has indicated that such an easement would not function to an acceptable standard due to constraints in the siting of existing structures, vegetation and utility services. The proximity of existing buildings to the easement will likely require underpinning of their foundations and may impact their structural integrity. As such, the provision of a dispersion trench is considered appropriate in the context of the site and surrounds.

- **Building height, bulk and scale**

The submissions raised concerns that the proposed development exhibits an overdevelopment of the site due to its excessive building height, bulk and scale and failure to comply with several built form control requirements.

Comment:

While the proposed development is larger in bulk and scale than existing development in the locality, it is considered the revised design appropriately balances the needs of the applicant and the concerns of the objectors. The massing of the building is shifted towards the western boundary, away from the rear private open space of the eastern adjacent properties and the extent of the first second floor roofs has been significantly reduced, including a reduction in building height to comply with the 8.5m requirement.

Detailed assessment of the non-compliant elements of the proposed development, including building height, wall height, setbacks and building envelope is included below in this report.

- **Privacy**

The submissions raised concerns that the proposed development will cause unreasonable visual and acoustic privacy impacts to adjacent properties. One submission requests the

lodgement of an acoustic report.

Comment:

It is considered that the proposed development will not have an unreasonable impact to the visual and acoustic privacy of adjacent properties, subject to conditions to provide additional privacy treatments as discussed in the detailed assessment below.

The expected acoustic output from the proposed development is considered to be similar to that of existing residential development in the locality. It is noted there was issue raised about noise generated from the lift and a condition will be included to ensure reasonable acoustic amenity is maintained.

- **Overshadowing**

The submissions raised concerns that the proposed development will cause unreasonable overshadowing of adjacent properties.

Comment:

The proposed development demonstrates compliance with the solar access control requirements. Detailed assessment of the proposal's level of compliance solar access control is included below in this report.

- **Tree removal**

The submissions raised concerns that the proposed development requires the removal of existing established trees.

Comment:

The proposed development has been reviewed by Council's Landscape Officer who has not raised concerns with the proposed tree removal, subject to conditions, due to one tree being an exempt species and another showing signs of decay. The proposal includes the establishment of new landscaping and vegetation on the site to offset the required tree removal.

- **Revised technical reports**

The submissions raised concerns that due to the proposed design amendments, revised technical reports from the relevant consultants need to be provided.

Comment:

Correspondence from all consultants engaged by the applicant, including arborist, geotechnical engineer and stormwater engineer has been provided indicating that their existing recommendations apply to the revised design. Council has requested additional information from the applicant relating to the proposed stormwater discharge method (on site dispersion system) to ensure that it does not pose an increased landslip risk, particularly compared to existing site conditions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported, subject to conditions</p> <p>The application seeks consent for construction of a new dwelling with pool and associated landscape works.</p> <p>Councils Landscape Referral section has considered the application against the Warringah Local Environmental Plan, and the following Warringah DCP 2011 controls: I D1 Landscaped Open Space and Bushland Setting I E1 Preservation of Trees or Bushland Vegetation</p> <p>The Arboricultural Report prepared by Tree Talk and Landscape Plans provided are noted.</p> <p>The Arborist's Report notes one non-exempt tree requires removal. Several other exempt tree species are also to be removed from the site and five other trees on the site are to be retained</p> <p>The Tree to be removed, Tree 1 (<i>Eucalyptus</i> sp.) is indicated to have basal decay and adjacent to rock floaters which are to be removed for the works. In view of the above, retention of the tree is not considered desirable or achievable. No objections are raised to its removal.</p> <p>Two Significant <i>Angophora costata</i> trees are located near the western boundary, and are indicated for retention. The Arborist's Report indicates that the trees can be retained subject to Arboricultural supervision. In view of the extent of excavation for the Ground level immediately adjacent to the calculated structural root zone, it is recommended that tree root mapping be undertaken in the areas of excavation to establish the presence or otherwise to significant roots that may be affected. The root mapping also requires liaison with structural engineers to address construction techniques to protect important roots prior to issue of Construction Certificate.</p> <p>The Landscape Plan indicates replacement tree shrub and groundcover planting which is not objected to.</p> <p>No objections are raised with regard to landscape issues subject to conditions as recommended.</p> <p><u>Planner Note:</u></p> <p>The proposed planting includes <i>Acmena Smithii</i> 'Hot Flush' along the parts of the eastern and western boundaries and the full boundary. This species is generally capable of growing to a height of between 1.5m and 3m. In order to further improve privacy between dwellings, the proposed <i>Acmena Smithii</i> 'Hot Flush' along the eastern and southern boundaries are conditioned to be changed to another species of Lilly Pilly that is capable of reaching a height of at least 5m.</p>
NECC (Development)	Supported, subject to conditions

Internal Referral Body	Comments
Engineering)	<p>The proposal is for the construction of a new dwelling including the relocation of the vehicular crossing and new access stairs.</p> <p><u>Stormwater</u> The site falls to the rear and as such the stormwater disposal shall be in accordance with Clause 5.5 of Council's Water Management for Development Policy. All stages of the policy are to be addressed. Where an easement is not viable, evidence of refusal of easement shall be provided</p> <p>The submitted stormwater plan with the proposed absorption system is unsatisfactory. The calculations assumes an absorption area of 41.5m² but on the plan only two trenches are shown with approximately 5.5m² of absorption area. Where multiple trenches are proposed they should be connected.</p> <p>Based on the infiltration rate provided in the geotechnical report by Geo -Environmental Engineers dated 9/8/2021 and calculation shown on the stormwater plans peak flow has not been reached and the proposed volume is not sufficient. Where infiltration is proposed, particularly with a low infiltration rate, the calculations are to be carried out until convergence is reached. The calculation up to 120mins not sufficient as the volume is still increasing. The absorption system shall be designed in accordance with Appendix 3.</p> <p>If an absorption system is not feasible due to the volume required then an alternate design should be considered such as a level spreader designed in accordance with Appendix 4.</p> <p>Additional information required for assessment is as follows:</p> <ol style="list-style-type: none"> 1. Evidence of Easement refusal. 2. Amended design for the absorption system providing adequate volume. Calculations are to be provided. 3. Where absorption is not achievable, an alternate design for the stormwater discharge in accordance with Clause 5.5. <p><u>Access</u> The proposal includes a new driveway that appears to be steep. The profile exceeds the maximum grade of 1 in 4. The Applicant shall provide a long-section at both edges of the proposed access driveway to the proposed garage and demonstrate compliance with AS2890. The driveway shall incorporate one of Council's standard vehicle crossing profiles.</p> <p><i>Note to planner: The proposal includes a new access stairs in the road reserve and will require concurrence from the Road Asses team.</i></p> <p>Additional Information Provided on 11/2/2021</p>

Internal Referral Body	Comments
	<p>The amended plans submitted have been reviewed.</p> <p><u>Stormwater</u></p> <p>The amended stormwater plan proposes to discharge to a level spreader via an OSD system. The OSD system proposed uses AUSTDRAIN 'Enviromodules'. Underground OSD systems require access for maintenance and as such Enviromodules are not supported. An alternate OSD system shall be provided in accordance with Council's Water Management for Development Policy.</p> <p>Based on review of calculations the pre-developed state of nature flows is stated as 32l/s. However that is too high in considering this particular site area. Furthermore it is unclear if the bypass area of 240m² has been included in the discharge calculations. The plans are to be amended to clearly show discharge flows from level spreader as well as bypass areas. As per Appendix 4 the post developed total site discharge, including bypass flows and controlled flows through the level spreader, must not exceed the 20% AEP state of nature storm event.</p> <p>Additionally an easement refusal letter has not been provided. In accordance with Water Management for Development Policy, Council requires either a written evidence of easement refusal by the rear neighbour or a statutory declaration from the applicant. Further information can be found in the above policy.</p> <p>Additional Information Provided on 28/2/2022</p> <p>A Statutory Declaration has been provided by the applicant detailing the discussion for the easement. Additionally it is noted that email correspondence has occurred between the applicant and the downstream neighbour regarding easement design and independent valuations etc. However the applicant's engineering consultant does not support the easement due to the site constraints. An email from the consultant has been provided to Council detailing the difficulty in the easement installation.</p> <p>In this regard the applicant is proposing a level spreader design which significantly reduces the discharge rate from the subject site to the downstream property. As such Development Engineering have no objections to approval subject to conditions as recommended.</p> <p>Additional Comments from 14/4/2022</p> <p>The level spreader design significantly reduces the discharge rate from the subject site to the downstream property from existing conditions. In the existing conditions the total 312m² of impervious area (hard surface) is discharging to the rear of the property without any visible any control. In the proposed level spreader design the discharge from the majority of the 526m² of impervious area is controlled by a 40m³ OSD system. This reduces the discharge to the rear from 52l/s to 26l/e in the 1% AEP event in accordance with the submitted plan. The level spreader design significantly reduces the</p>

Internal Referral Body	Comments
	discharge rate from the subject site to the downstream property from existing conditions and complies with the Council's policies.
Road Reserve	Supported, subject to support from Development Engineering There is limited impact on existing road infrastructure. There is no objection in principle to the proposed stairs subject to the inclusion of design details in the s138 Road Act application to the Development Engineering team for the suspended driveway. A 1.5m landing at the kerb shall be provided. Driveway safety barriers shall be 1.5m clear of the kerb.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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. 1237014S_02, dated 08/02/2022). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0006474928-05, dated 07/02/2022).

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

Commitment	Required Target	Proposed
Water	40	41
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 (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 raised no objections, subject to conditions which have been included in the recommendation of this report.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.87m	27.9%	No

Compliance Assessment

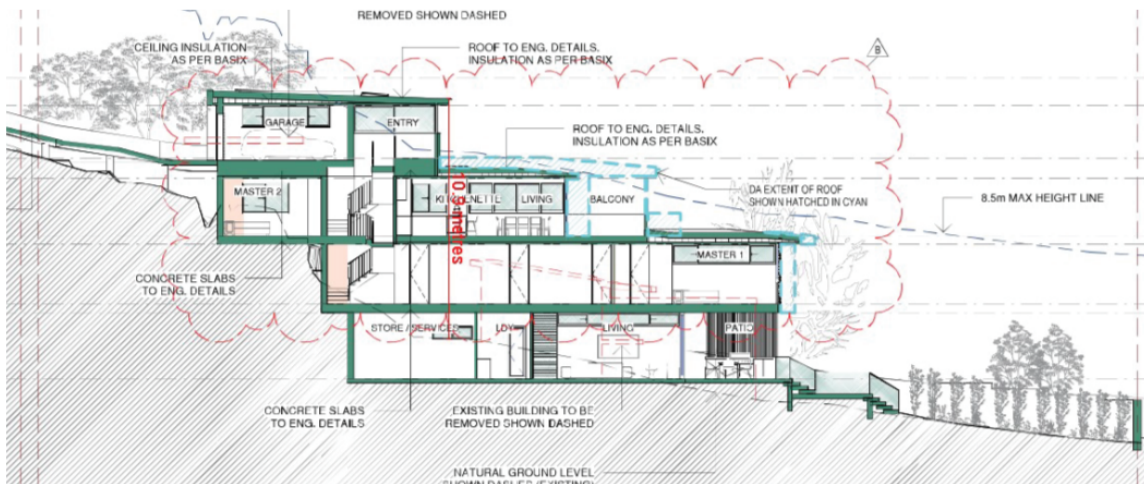
Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.87m
Percentage variation to requirement:	27.9%



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 judgements 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 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 site falls approximately 12 metres across its surface in a southerly direction towards its rear boundary making strict compliance with the 8.5 m height standard difficult to achieve while striking a balance between the provision of appropriately sized floor plates, excavation and building height.

The highly articulated and modulated building form steps down the site in response to topography with the breaching elements confined to the southern edges of the upper level floor plates as the site falls away steeply within the proposed building footprint.

Strict compliance at the garage/ entry level would significantly compromise the disabled access arrangement associated with the development which requires the provision of both internal stair and lift access from the same level as the garaging which is set back into the site 6.5 metres to comply of the front building line setback. In this regard, the lift would need to be relocated to within the side boundary setback adjacent to the garage where it would have a greater visual impact as viewed from the street than the design currently proposed.

Such outcome would compromise the disabled access and amenity outcomes for the site without any measurable benefit in terms of reduced streetscape or residential amenity impacts. This would

represent poor design.

Approval of the building height variation will achieve objective (c) of the Act given the contextually appropriate nature of the building form and the compatibility of the dwelling with the height and scale of surrounding and nearby development.

Approval of the variation of the building height standard will facilitate safe and convenient disabled access to the site and promote good contextually appropriate design which will facilitate enhanced amenity outcomes to and from the development.

The building is of good design quality with the variation facilitating a height and floor space that provides for contextual built form compatibility consistent with objective (g) of the Act.

Council generally concurs with the justification presented by the applicant. The site topography presents a challenge in being able to strictly comply with the numerical building height requirement while also achieving an appropriate level of access and functionality for occupants of the dwelling.

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 WLEP 2011 are:

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

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

Comment:

The site topography presents a challenge to provide a numerically compliant building height while also ensuring other essential elements, including parking and access can be provided on the site. Notwithstanding the non-compliance, the height and scale of the proposed development is generally consistent with that of other dwellings on the southern side of Woolgoolga Street.

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

Comment:

The proposed development is considered to be designed and sited in a manner that adequately mitigates visual impact, view loss, privacy and solar access impacts to adjacent properties.

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

Comment:

The proposed development is not expected to impact upon the scenic quality of nearby coastal and bush environments as it is not readily discernible from any such location.

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

Comment:

The proposed development will not be visually prominent when viewed from the street or other public domain areas.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposed development replaces a small and impractical dwelling with a larger, more functional dwelling within a low density residential environment and will contribute to the housing needs of the community.

It is considered that the development satisfies this objective.

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

Comment:

The proposed development does not alter the existing residential land use.

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

Comment:

The proposed development provides adequate landscaped open space and retains several existing canopy trees. New landscaping is proposed to improve the visual quality of the site from the public domain.

It is considered that the development satisfies this objective.

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 & Infrastructure, 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.

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- (c) the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the Waste Management Plan for the

development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011 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.

6.4 Development on sloping land

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report assessed the originally proposed absorption system and concluded that the proposed development is acceptable from a geotechnical perspective. During assessment, the proposed absorption system was changed to a dispersion system. Whilst Council's development engineers have reviewed the amended stormwater disposal and are satisfied that this change will not cause *significant detrimental impact*, Council has requested additional information from the applicant to provide a statement from their geotechnical engineer outlining whether any detrimental

impact to the land may be caused by the revised dispersion system. This information is forthcoming and will be provided to the panel under a supplementary memorandum.

The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, assuming the assessment of the applicant's geotechnical engineer does not identify any concerns regarding the revised dispersion system, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	10.4m	44.4%	No
B3 Side Boundary Envelope	E - 4m	Outside envelope	16.7%	No
	W - 4m	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	E - 0.9m	Dwelling - 1.77m	N/A	Yes
		Driveway - 0.9m	N/A	Yes
	W - 0.9m	Dwelling - 2.45m	N/A	Yes
		Pool curtilage - 0.9m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	6m	7.7%	No
B9 Rear Boundary Setbacks	6m	12.3m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (370.6m ²)	44.9% (416m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

This clause requires that walls do not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building.

The proposed development incorporates the following wall heights:

East Elevation

Garage level - 10.4m
Second floor - 8.5m
First floor - 7.2m

West Elevation

Garage level - 9.4m
Second floor - 7.3m
First floor - 6.8m

As such, the proposed development incorporates a variation to the wall height requirement up to 44.4%.

Merit consideration:

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

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

Comment:

The non-compliance is largely caused by the steepness of the site and the elevated nature of the proposed garage level. This is necessary to ensure compliant driveway gradients are achieved.

Notwithstanding the non-compliance, the proposed development is considered to be appropriately sited to minimise visual impacts caused by the proposed wall heights. The wall with the largest variation is setback 4.5m from the eastern side boundary and the wall with the closest side setback (SE corner) has a height of 7.2m, which demonstrates compliance with the control requirement.

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

Comment:

The height of the proposed development remains below the tree canopy level.

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

Comment:

The proposed development will not result in any unreasonable view impacts.

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

Comment:

While the proposed development will result in additional building bulk, the extent of impacts are considered to be reasonable in the context of the site and adjacent properties.

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

Comment:

The development is sited to minimise excavation depth and the overall height of the dwelling. The dwelling steps down with the slope and is considered to appropriately respond to the topography of the site.

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

Comment:

The proposed roof form demonstrates contemporary architectural design is considered appropriate within the locality.

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

B3 Side Boundary Envelope

Description of non-compliance

The control requires that a building must be sited within the building envelope which is determined by projecting planes at 45° from a height of 4.0m above the ground level at the side boundary.

Due to the splayed eastern side boundary, the central portion of the dwelling complies with the building envelope requirement while the northern and southern ends encroach beyond the envelope. The proposed dwelling encroaches beyond the side boundary envelope along the east elevation to a height of up to 1.4m, representing a variation of up to 16.7%.

No portion of the proposed dwelling encroaches beyond the building envelope along the west elevation.

Merit consideration

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

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

Comment:

The proposed development includes non-compliance with the building envelope requirement along parts of the east elevation with elements that exceeds the maximum permitted building height. Notwithstanding the non-compliance, the proposed dwelling is considered to be designed and sited in a manner that mitigates the impact of the visual dominance and bulk of the building. The extent of the non-compliance is limited to the northeast and southeast corners of the building. The setback of the building to the eastern boundary helps to limit its visual dominance when viewed from the rear of the eastern adjacent properties.

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

Comment:

The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintained solar access in accordance with the DCP requirements. Refer to detailed assessment under Part D6 of WDCP.

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

Comment:

Areas of excavation of up to 4m are required to facilitate the proposed dwelling. The building envelope non-compliance is generally caused by the slope of the site and the need to provide compliant off-street parking. To reduce the extent of the non-compliance, additional excavation would be required, which is not considered to be appropriate in the context of the site and surrounds and will inhibit the ability to provide off-street parking. It is considered that the proposal is appropriately stepped to respond to the site topography. No unreasonable streetscape or amenity impacts are expected to arise as a consequence of the development.

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

B7 Front Boundary Setbacks

Description of non-compliance

The control requires development to be setback a minimum of 6.5m from the front boundary, apart from driveways, letter boxes, garbage storage areas and fences.

The proposed development has a minimum front setback of 6m to the garage, representing a variation of 7.7%.

There are other built elements proposed within the front setback area, including an elevated driveway and pedestrian path. These structures are considered acceptable within the front setback area and will not impact upon the streetscape quality and character.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The most dominant built element within the front setback area is the proposed garage, which is setback a minimum of 6m from the boundary. Most of the garage is setback more than 6.5m from the front boundary. Other built elements, such as the elevated driveway and pedestrian entry are not expected to cause impact to the openness of the front setback area as they are low height structures and do not compromise sightlines across property boundaries. As such, the proposed development is not considered to unreasonably impact upon the openness of the

front setback area.

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

Comment:

The proposed development generally maintains the existing building pattern and incorporates landscaping to break up the built form.

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

Comment:

The proposed development incorporates landscaped planter boxed between the driveway and pedestrian entry to soften the extent of built structures within the front setback area. As the land falls away from the street, the structures within the front setback area are not expected to cause unreasonable impact to the visual quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment:

The proposed development will not result in any unreasonable view impacts.

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

D6 Access to Sunlight

Merit consideration

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

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

Comment:

The control requires no more than 50% of the required area of the private open space of adjacent properties to be overshadowed for more than 3 hours during mid-winter. Assuming all adjacent dwellings contain three or more bedrooms, this means that no more than 30m² of adjacent private open space is overshadowed. The proposed development demonstrates a numerically compliant level of solar access to the private open space of the subject site and adjacent properties.

- *To encourage innovative design solutions to improve the urban environment and public open space.*

Comment:

The proposed development has been designed in a manner to limit the impact of overshadowing, primarily through the roof pitch and elevation articulation.

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

Comment:

The proposed development adequately demonstrates a passive solar design and the use of solar energy through elements such as roof design and window placement.

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

D8 Privacy

Merit consideration

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The proposed dwelling is sited centrally within the site with low use rooms at the first floor level (e.g. bedrooms and bathrooms) are oriented towards the side boundaries. Some high use rooms (e.g. kitchen and living rooms) are located on the eastern side of the second floor, which may result in additional privacy impacts to the eastern adjacent properties. To mitigate this, a condition is included to require windows W07 and W08 to be treated with either obscured glazing to a minimum height of 1.5m above the finished floor level or fitted with external louvres. Other high use rooms are located on the ground floor and are oriented towards the rear of the site which has sufficient spatial separation (over 17m from the southern boundary) to the rear adjacent dwellings to mitigate privacy impacts. Window W02 is also conditioned to utilised obscured glazing due to the high level of traffic that is expected in the entry foyer area and its proximity to other properties.

Due to their close proximity to the rear private open space of the eastern adjacent properties, the windows on the eastern elevation of the first floor are recommended to incorporate additional privacy treatment to mitigate impacts to those properties. Windows W18, W20 and W21 are to be treated with either obscured glazing to a minimum height of 1.5m above the finished floor level or fitted with external louvres. Windows W19 and W22 are to utilise obscured glazing.

All other windows and openings are considered to be acceptable and will not result in unreasonable impacts to the privacy of adjacent properties are are not recommended to incorporate additional privacy treatment.

The proposed rear deck at the second floor level is likely to result in overlooking of the rear private open space of the eastern adjacent properties. In order to limit this, a condition is added to require the installation of a 1.65m high privacy screen along the eastern edge of the deck. A condition is also added to reduce the depth of the deck by at least 1.0m which will assist in

reducing the privacy impact of this element of the proposed dwelling.

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

Comment:

The proposal, subject to condition, will result in an appropriate design suitable for the locality.

- *To provide personal and property security for occupants and visitors.*

Comment:

Subject to condition, the proposal has appropriate design for personal and property security for a low density residential environment.

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

D9 Building Bulk

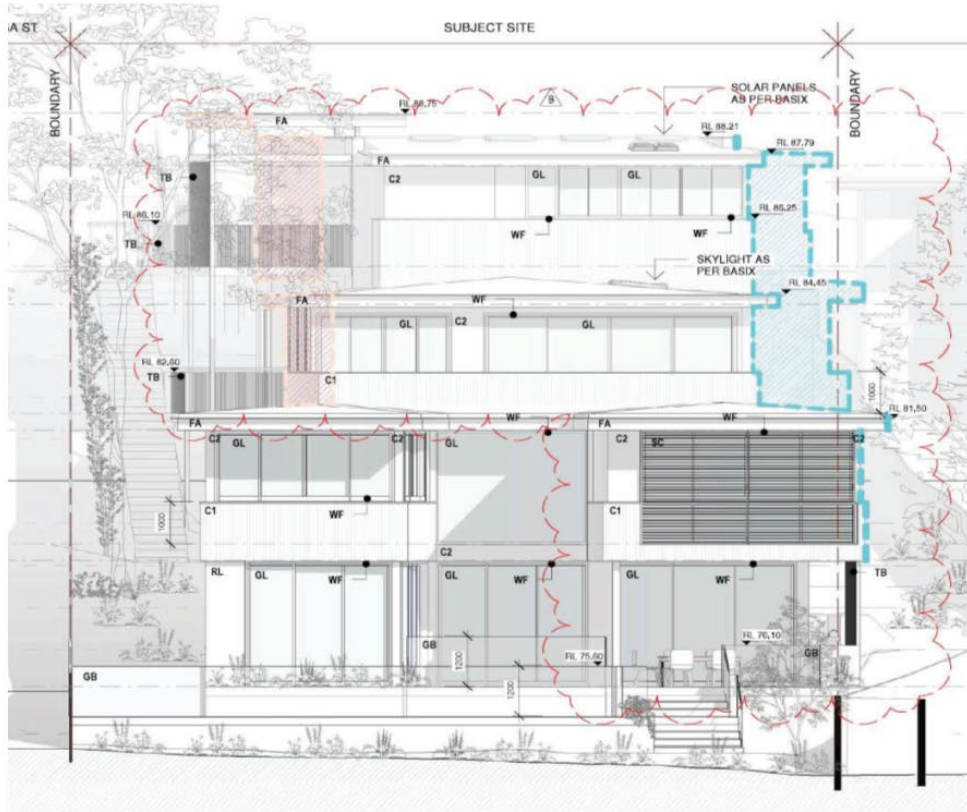
Merit consideration

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

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

Comment:

While the proposed development incorporates several non-compliant elements with the built form controls and building height, it is considered the dwelling is designed and sited in a manner that diffuses the bulk and scale of the building. Design amendments have been incorporated to shift the upper level bulk of the dwelling from the eastern side to the western side to reduce the visual dominance of the building when viewed from the eastern adjacent properties, see snip of the southern elevation below.



The blue highlighting indicates the removal of built form and the pink highlighting indicates new built form.

The building demonstrates appropriate response to the site topography by stepping down with the slope. Architectural elements and facade articulation is incorporated to break up the massing of the building and improving its visual interest.

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

Comment:

The development is adequately separated from property boundaries and incorporates an appropriate design, which minimises the visual impact of the development when viewed from the public domain or adjoining properties. Furthermore, there is sufficient landscaping incorporated with the development to enhance the natural amenity of the streetscape and soften the visual impacts of the built form.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly 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 \$9,845 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$984,500.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 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.

In summary, a detailed assessment has been required for the following specific issues:

- Variation to the building height development standard;
- Non-compliance with the wall height, building envelope and front setback controls; and
- Objection to the proposal due to its height, bulk and scale, amenity impacts (solar access, privacy), geotechnical stability of the land and stormwater management plan.

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 WLEP 2011 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/1801 for Demolition works and construction of a dwelling house, including a swimming pool and driveway on land at Lot 23 DP 23447, 55 Woolgoolga Street, NORTH BALGOWLAH, 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
A202 Rev B	01/02/2022	Ursino Architects
A203 Rev A	20/09/2021	Ursino Architects
A301 Rev B	01/02/2022	Ursino Architects
A302 Rev B	01/02/2022	Ursino Architects
A303 Rev B	01/02/2022	Ursino Architects
A304 Rev B	01/02/2022	Ursino Architects
A305 Rev B	01/02/2022	Ursino Architects
A306 Rev B	01/02/2022	Ursino Architects
A307 Rev B	01/02/2022	Ursino Architects
A401 Rev B	01/02/2022	Ursino Architects
A402 Rev B	01/02/2022	Ursino Architects
A403 Rev B	01/02/2022	Ursino Architects
A501 Rev B	01/02/2022	Ursino Architects
A502 Rev B	01/02/2022	Ursino Architects
A503 Rev B	01/02/2022	Ursino Architects
A504 Rev B	01/02/2022	Ursino Architects
A901 Rev B	01/02/2022	Ursino Architects

Engineering Plans		
Drawing No.	Dated	Prepared By

CC210510C-C1 Issue C	24/02/2022	ACOR Consultants
CC210510C-C2 Issue C	24/02/2022	ACOR Consultants
CC210510C-C3 Issue C	24/02/2022	ACOR Consultants
CC210510C-C4 Issue C	24/02/2022	ACOR Consultants
CC210510C-C5 Issue C	24/02/2022	ACOR Consultants
CC210510C-C6 Issue C	24/02/2022	ACOR Consultants
CC210510C-C7 Issue C	24/02/2022	ACOR Consultants
CC210510C-C8 Issue C	24/02/2022	ACOR Consultants

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment (Ref: 5390/A)	September 2021	TreeTalk Arboricultural Consulting
Arboricultural Impact Assessment Addendum (Ref: 5390/B)	March 2022	TreeTalk Arboricultural Consulting
BASIX Certificate No. 1237014S_02	08/02/2022	Certified Energy
Geotechnical Investigation Report (Ref: G21059NB-R01F)	09/08/2021	Geo-environmental Engineering
Geotechnical Investigation Report Addendum (Ref: G21059NB-R01F)	11/03/2022	Geo-environmental Engineering
NATHERS Certificate No. 0006474928-05	07/02/2022	Certified Energy

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan Issue A	07/09/2021	Unnamed

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	01/07/2021	Ursino Architects
A602 Rev B	01/02/2022	Ursino Architects

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. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	09/11/2021

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site as detailed on the approved plans for any land use of the site beyond the definition of a *dwelling house*, as defined by the Warringah Local Environment Plan 2011 Dictionary.

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

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

4. **No Approval for Secondary Dwelling**

No approval is granted under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Cooking facilities are not permitted to be installed or used at the second floor level of the dwelling house.

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

5. **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.

6. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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

7. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$9,845.00 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 \$984,500.00.

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

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.

8. **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).

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

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

9. **Tree Root Investigation and Tree Root Map**

Prior to the issue of a Construction Certificate a tree root mapping investigation for excavation areas adjacent to Trees 2 and 3 (*Angophora costata*) as identified in the Arboricultural Impact Assessment dated September 2021 prepared by Tree Talk Arboricultural Consulting, shall be undertaken and a Tree Root Map must be documented that will be the basis for determining construction methodology near existing trees 2 and 3.

An Arborist with minimum AQF Level 5 in arboriculture shall supervise the works to verify tree root locations. A non-destructive root investigation shall be conducted complying with clause 3.3.4 of AS 4970-2009 Protection of Trees on Development Sites.

The root investigation shall map existing roots of significance that must not be impacted by construction works. The tree root investigation shall be conducted to confirm the following data to be used for the location/alignment of any new proposed works:

- i) confirmation of the location of any tree roots at or >25mm (Ø) diameter to areas that require excavation for proposed works. Alternative alignment of proposed works shall be provided as necessary to avoid major roots, and

- ii) mapping of the suitable location/alignment of proposed works.

The Tree Root Map shall be issued to a qualified Structural Engineer as a basis for structural design, and for determining the final location/alignment and construction methodology of proposed works within the tree protection zone (TPZ).

Prior to the issue of a Construction Certificate, the Arborist shall provide certification to the Certifying Authority that the tree root investigation and clear distance recommendations have been adequately addressed in the Construction Certificate plans.

Reason: To ensure protection of vegetation proposed for retention or adjacent to the site.

10. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

11. **Certification and Design of Elevated Parking Facility Work**

The Applicant shall submit a Structural Engineers' design and certificate certifying that the elevated parking facility is designed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in

particular Section 2.4.5 Physical controls.

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

Reason: Safety and Compliance with this consent.

12. **Amendments to the approved plans**

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

- a) The door and partition wall on the western side of the stairwell on the second floor plan is not approved and must be deleted from the proposal.
- b) Proposed works to the brick boundary wall on the eastern boundary (as detailed on Dwg No. A302) is not approved and must be deleted from the proposal. All reference or details of the works to the boundary wall on the eastern boundary is to be removed. No owners consent from the adjoining property has been provided and the wall extends onto the adjoining property.
- c) Windows W02, W19 and W22 must utilise obscured glazing.
- d) Windows W07, W08, W17, W20 and W21 are to be treated with either obscured glazing to a minimum height of 1.5m above the finished floor level or fitted with external louvres.
- e) The depth of the second floor rear deck is to be reduced by at least 1.0m.
- f) The kitchenette on the second floor is to be reduced in size to remove the return bench (containing the sink) and all cooking facilities.
- g) Proposed works to the brick boundary wall on the eastern boundary (as detailed on plan No A302) are not approved and must be deleted from the proposal. All references or details of the

works to the boundary wall on the eastern boundary are to be removed. No owners consent from the adjoining property has been provided and the wall extends onto the adjoining property.

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

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

13. **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 referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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.

14. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

15. **On-site Stormwater Disposal Details**

The Applicant is to provide a detailed drainage design and certification detailing the provision of an on-site stormwater detention (OSD) system in accordance with Clause 9.3.2 of Northern Beaches Council's Water Management for Development Policy.

The detailed plan must demonstrate the proposed OSD system is discharged to the downstream Council street kerb via an easement through a downstream private property, including evidence of the creation of the easement.

If the applicant is unable to form a reasonable agreement of an easement with the owners' of the downstream property(s), an onsite stormwater disposal system (level spreader) shall be designed in accordance with Appendix 4 of Council's Water Management for Development Policy and generally in accordance with the concept drainage plans prepared by ACOR Consultants, project number CC210510, drawing number C1 to C8, dated 24/2/2022.

The drainage plan for the level spreader must address the following:

- i. Level spreader design shall be in accordance with Appendix 4
- ii. Total site discharge including bypass flows and controlled flows through the level spreader must not exceed the 20% AEP state of nature storm event.
- iii. The level spreader should not be located within three meters of the side or rear boundary.
- iv. The level spreader must be placed parallel to the contours.

Detailed OSD system or level spreader plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

16. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the vehicular crossing, access stairs and associated works within the road reserve which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. A vehicular crossing 4.0metres wide at the kerb to 4.5 metres wide at the boundary in accordance with Council's standard drawing A4/3330/5EL.
2. Structural details for the elevated sections of the driveway and associated retaining structures. The first 1.5m of the driveway crossing to be similar to existing ground levels without barriers to maintain pedestrian access along the road reserve.
3. Safety barriers and sight distances are to be in accordance with AS/NZS 2890.1:2004.
4. Structural details of the new pedestrian access stairs. A 1.5m wide landing shall be provided at road level between the stairs and the kerb.
5. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided with the application.
6. Structural Engineer's certification of the design of all retaining walls, access stair,

elevated driveway and safety barriers.

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

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

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

17. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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.

18. **Structural Adequacy and Excavation Work**

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

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

19. **Compliance with Standards**

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

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

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

20. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

21. **Privacy Screen**

A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost eastern edge of the second floor rear deck located off the living and dining rooms and Bed 2 as shown on the approved plans. The privacy screen shall be of fixed panels or louvre style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

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

22. **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 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

23. **Project Arborist**

A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with the Tree Root Mapping report, the Arboricultural Impact Assessment dated September 2021 prepared by Tree Talk Arboricultural Consulting and 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.

All tree protection measures specified 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.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing trees have been carried out satisfactorily to ensure no impact to the health of the trees. 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.

24. **Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property:
Tree number 1 as identified in the Arboricultural Impact Assessment dated September 2021 prepared by Tree Talk Arboricultural Consulting

- i)

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.

25. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties:

- o 53 Woolgoolga Street
- o 57 Woolgoolga Street
- o 6 Dorrigo Avenue
- o 8 Dorrigo Avenue

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this

condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

26. Protection of Landscape Features and Sites of Significance

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

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.

27. 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.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with the Tree Root Mapping report, the Arboricultural Impact Assessment dated September 2021 prepared by Tree Talk Arboricultural Consulting and 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 the Project Arborist,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
 - 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 the Project Arborist,

- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with the Project Arborist including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, the Project Arborist 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.

The Certifying Authority must ensure that:

- c) 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.

28. **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.

29. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;

- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

30. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

31. **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.

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

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

33. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

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

34. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

35. **Waste Management During Development**

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

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

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

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

36. **Landscape Completion**

Tree, shrub and groundcover planting is to be implemented in accordance with the approved Landscape Plan.

The proposed *Acmena Smithii* 'Hot Flush' along the eastern and southern boundaries is to be changed to different species of Lilly Pilly that is capable of reaching a height of at least 5m.

Prior to the issue of any Occupation Certificate details (from a qualified horticulturalist, landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

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

Prior to the issue of any Occupation Certificate a report prepared by the project arborist shall be submitted to the Certifying Authority assessing the health and impact on all existing trees required to be retained including the following information:

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

vegetation.

Reason: Tree protection.

38. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- o Compare the post-construction report with the pre-construction report,
- o Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- o Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

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

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

A suitably qualified geotechnical consultant is to provide confirmation that the development is consistent with the recommendations of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

40. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf>

The form for the application can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf>

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches

Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

41. **Certification Elevated Parking Facility Work**

The Applicant shall submit a Structural Engineers' certificate certifying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation.

Reason: Compliance with this consent.

42. **Retaining walls and Suspended Slabs in Road Reserve**

The retaining walls and suspended slab works in the road reserve shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety

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

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

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

Reason: To ensure bushland management. (DACPLF01)

44. **House / Building Number**

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

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

Reason: Proper identification of buildings.

45. **Waste Management Confirmation**

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

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

46. **Swimming Pool Requirements**

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

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

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life (DACPLF09)

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

47. **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.

48. **Geotechnical Recommendations**

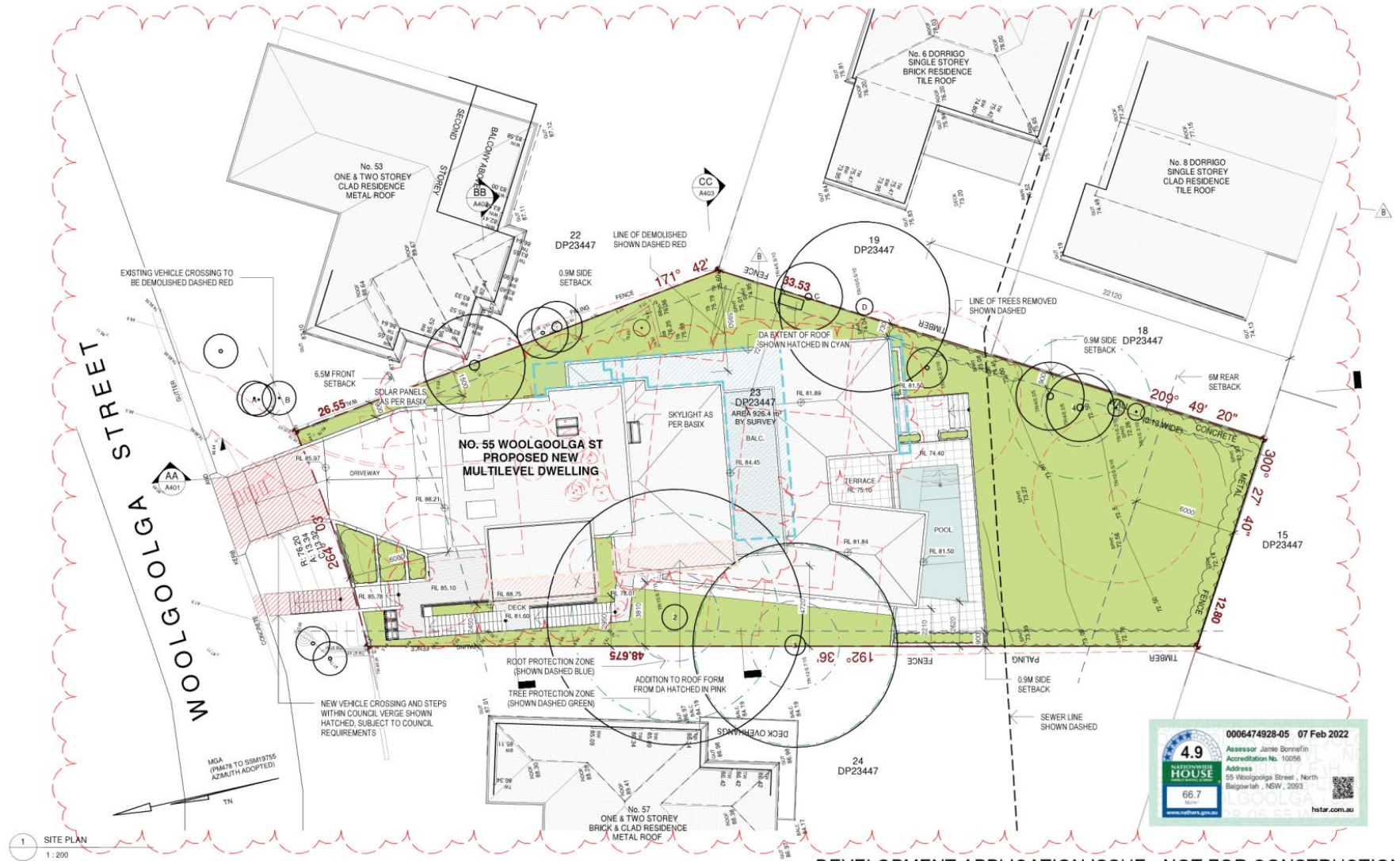
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

49. **Swimming Pool/Spa Motor and Plant Equipment Noise**

The swimming pool / spa motor and all other plant equipment shall not produce noise levels that exceed 5dB(A) 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.



1 SITE PLAN
1:200

DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION

URSINO ARCHITECTS

Subs 313 - 49 Queens Road Five Dock NSW 2046
(02) 9570 2421 | PO Box 981 Five Dock NSW 2046
www.ursino.com.au

REGISTERED ARCHITECT: Robert Ursino NSW ARB No: 10565

REVISION	DESCRIPTION	DATE	LEGEND & NOTES
A	DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION	20.09.2021	
B	ADDITIONAL INFORMATION - NOT FOR CONSTRUCTION	01.02.2022	

EXISTING TREE TO BE RETAINED
 EXISTING TREE TO BE REMOVED
 PROPOSED NEW TREE

CLIENT	SCALE	DRAWING TITLE	DATE
PRYOR	1:200	SITE PLAN	01.02.2022

ADDRESS: 55 WOOLGOOLGA ST, NORTH BALGOWLAH NSW 2093
 DRAWN BY: LC
 DESIGNED BY: RU
 PROJECT NO.: 21.05
 REV: B
 TRUE NORTH
 DATE: 01.02.2022
 DRAWING NO.: A202

0006474928-05 07 Feb 2022

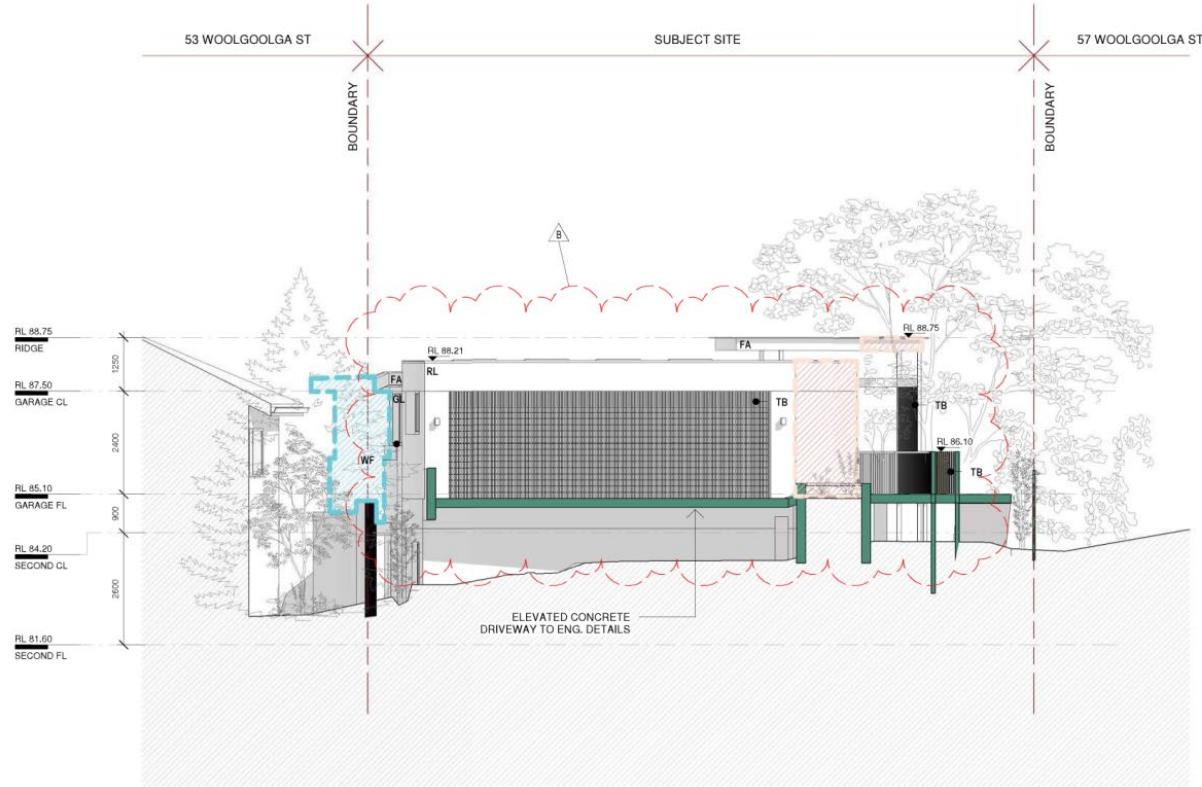
Assessor Jamie Bonnell
Accreditation No: 10056

Address
55 Woolgoolga Street, North
Balgoolah, NSW, 2093

4.9
NORTHCOAST HOUSE
66.7

www.northernbeaches.gov.au
hstar.com.au

- MATERIALS LEGEND
(REFER TO DA001)**
- RL - RENDER - LIGHT
 - C1 - METAL CLADDING
 - SC - METAL SCREEN
 - GB - GLASS BALUSTRADE
 - DK - DECKING
 - FA - FASCIA
 - GL - GLASS
 - WF - WINDOW FRAMES
 - C2 - FC CLADDING
 - RO - ROOF
 - DR - DRIVEWAY
 - TB - TIMBER BATTEN
 - QU - GUTTER



1 NORTH ELEVATION
1:100



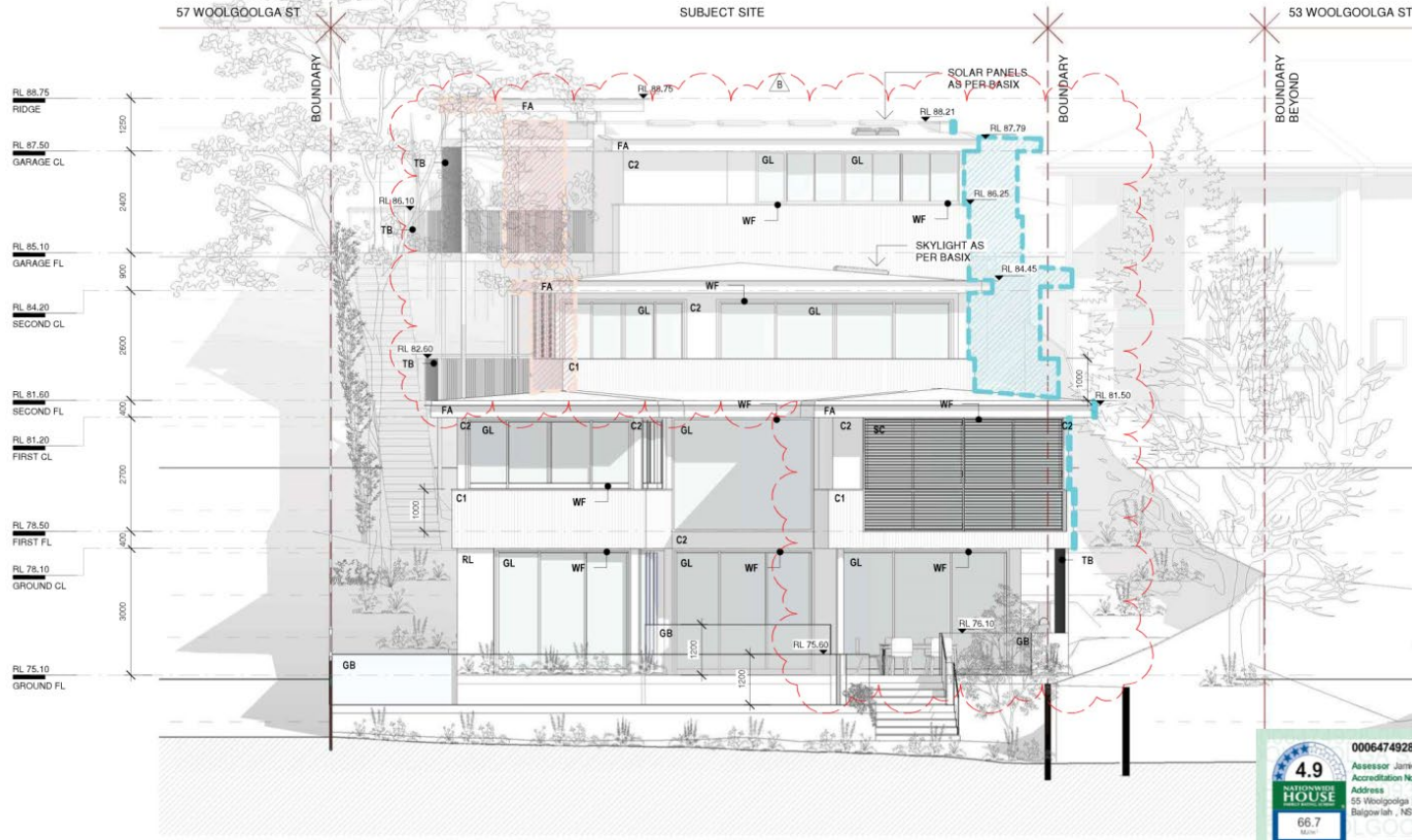
DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION

REVISION	DESCRIPTION	DATE	LEGEND & NOTES	CLIENT	SCALE	DRAWING TITLE
A	DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION	20.09.2021	<ul style="list-style-type: none"> Ⓢ SMOKE DETECTOR WM WASHING MACHINE DRY DRYER SL SKYLIGHT --- ROOT PROTECTION ZONE --- TREE PROTECTION ZONE 	PRYOR	1:100	NORTH ELEVATION
B	ADDITIONAL INFORMATION - NOT FOR CONSTRUCTION	01.02.2022	<ul style="list-style-type: none"> ADDN TO BUILT FORM FROM DA ADDN TO ROOF FORM FROM DA REDUCTION TO BUILT FORM FROM DA REDUCTION TO ROOF FORM FROM DA 	55 WOOLGOOLGA ST NORTH BALGOWLAH NSW 2093	DRAWN BY: LC DESIGNED BY: RU PROJECT NO.: 21.05 REV: B	TRUE NORTH DATE: 01.02.2022 DRAWING NO.: A501

GENERAL NOTES: ALL DIMENSIONS TO BE VERIFIED BY BUILDER PRIOR TO COMMENCEMENT OF WORKS. IF BOUNDARY DIMENSIONS & ALL LEVELS SUBJECT TO CONFIRMATION BY BUILDER. LINE FIGURED DIMENSIONS ONLY. DO NOT SCALE FROM PLANS. IF ALL WORKS TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS. IF ALL WORKS ARE TO BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA. IF ALL DRAWINGS ARE DESIGN INTENT ONLY AND NOT FOR CONSTRUCTION.
COPYRIGHT: THIS DRAWING AND DESIGN IS SUBJECT TO COPYRIGHT AND SHALL NOT BE COPIED IN WHOLE OR IN PART WITHOUT THE WRITTEN PERMISSION FROM URSINO ARCHITECTS.

**MATERIALS LEGEND
(REFER TO DA001)**

- RL - RENDER - LIGHT
- C1 - METAL CLADDING
- SC - METAL SCREEN
- GB - GLASS BALUSTRADE
- DK - DECKING
- FA - FASCIA
- GL - GLASS
- WF - WINDOW FRAMES
- C2 - FC CLADDING
- RO - ROOF
- DR - DRIVEWAY
- TB - TIMBER BATTEN
- QU - GUTTER



1 SOUTH ELEVATION
1:100

URSINO ARCHITECTS

Subo 313 - 49 Queens Road Five Dock NSW 2046
(02) 9970 2421 | PO Box 981 Five Dock NSW 2046
www.ursino.com.au

REGISTERED ARCHITECT: Robert Ursino NSW ARB No: 10565

REVISION	DESCRIPTION	DATE
A	DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION	20.09.2021
B	ADDITIONAL INFORMATION - NOT FOR CONSTRUCTION	01.02.2022

- LEGEND & NOTES**
- Ⓢ SMOKE DETECTOR
 - WM WASHING MACHINE
 - DRY DRYER
 - S/L SKYLIGHT
 - ROOT PROTECTION ZONE
 - TREE PROTECTION ZONE

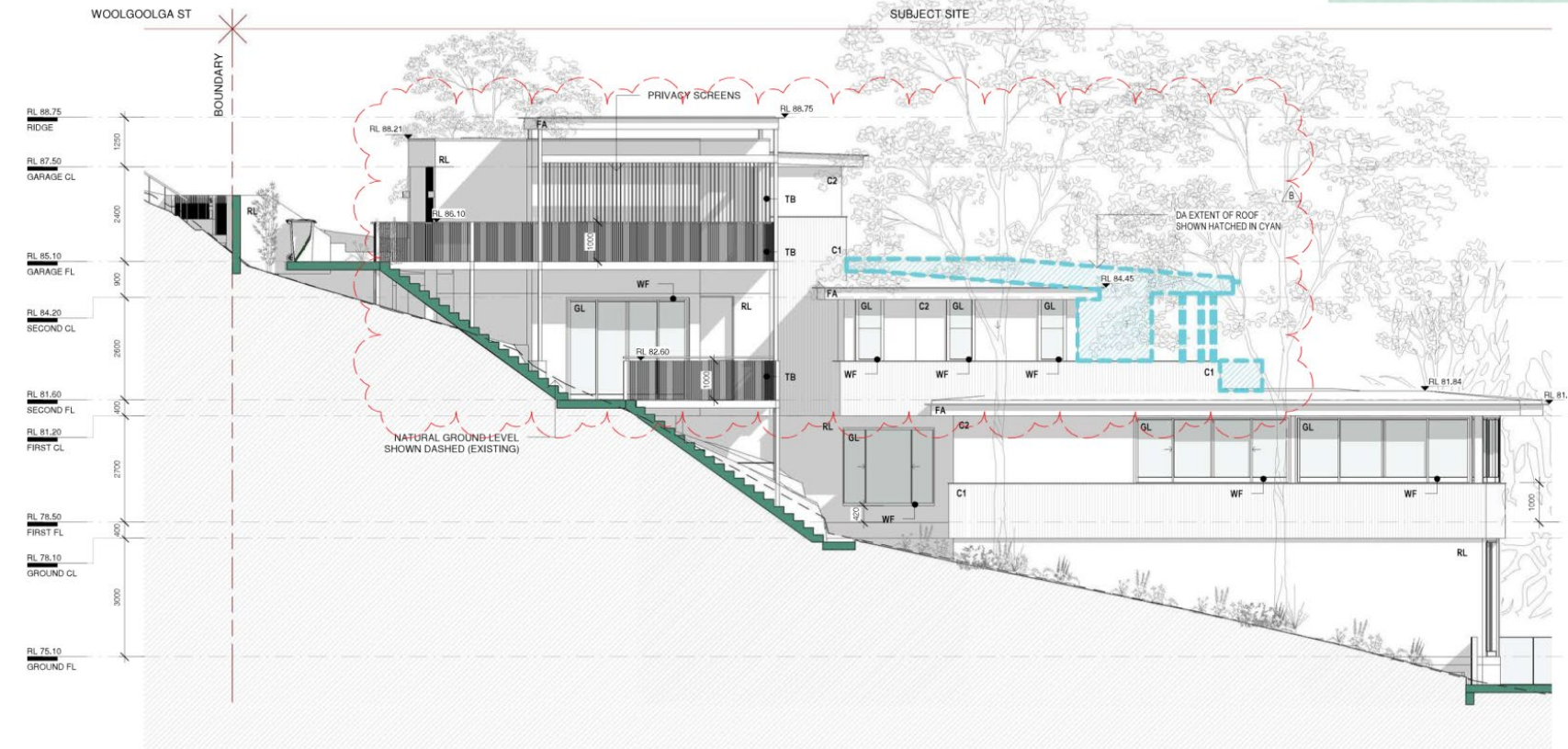
- ADDITION TO BUILT FORM FROM DA
- ADDITION TO ROOF FORM FROM DA
- REDUCTION TO BUILT FORM FROM DA
- REDUCTION TO ROOF FORM FROM DA

CLIENT	SCALE	DRAWING TITLE
PRYOR	1:100	SOUTH ELEVATION
ADDRESS	DRAWN BY:	DESIGNED BY:
55 WOOLGOOLGA ST NORTH BALGOWLAH NSW 2093	LC	RU
	PROJECT NO. REV	TRUE NORTH DATE
	21.05 B	01.02.2022
		DRAWING NO. A502

DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION

MATERIALS LEGEND
(REFER TO DA001)

RL - RENDER - LIGHT	WF - WINDOW FRAMES
C1 - METAL CLADDING	C2 - FC CLADDING
SC - METAL SCREEN	R3 - ROOF
GB - GLASS BALUSTRADE	DR - DRIVEWAY
DK - DECKING	TB - TIMBER BATTEN
FA - FASCIA	QU - GUTTER
GL - GLASS	



1 WEST ELEVATION
1:100

URSINO ARCHITECTS

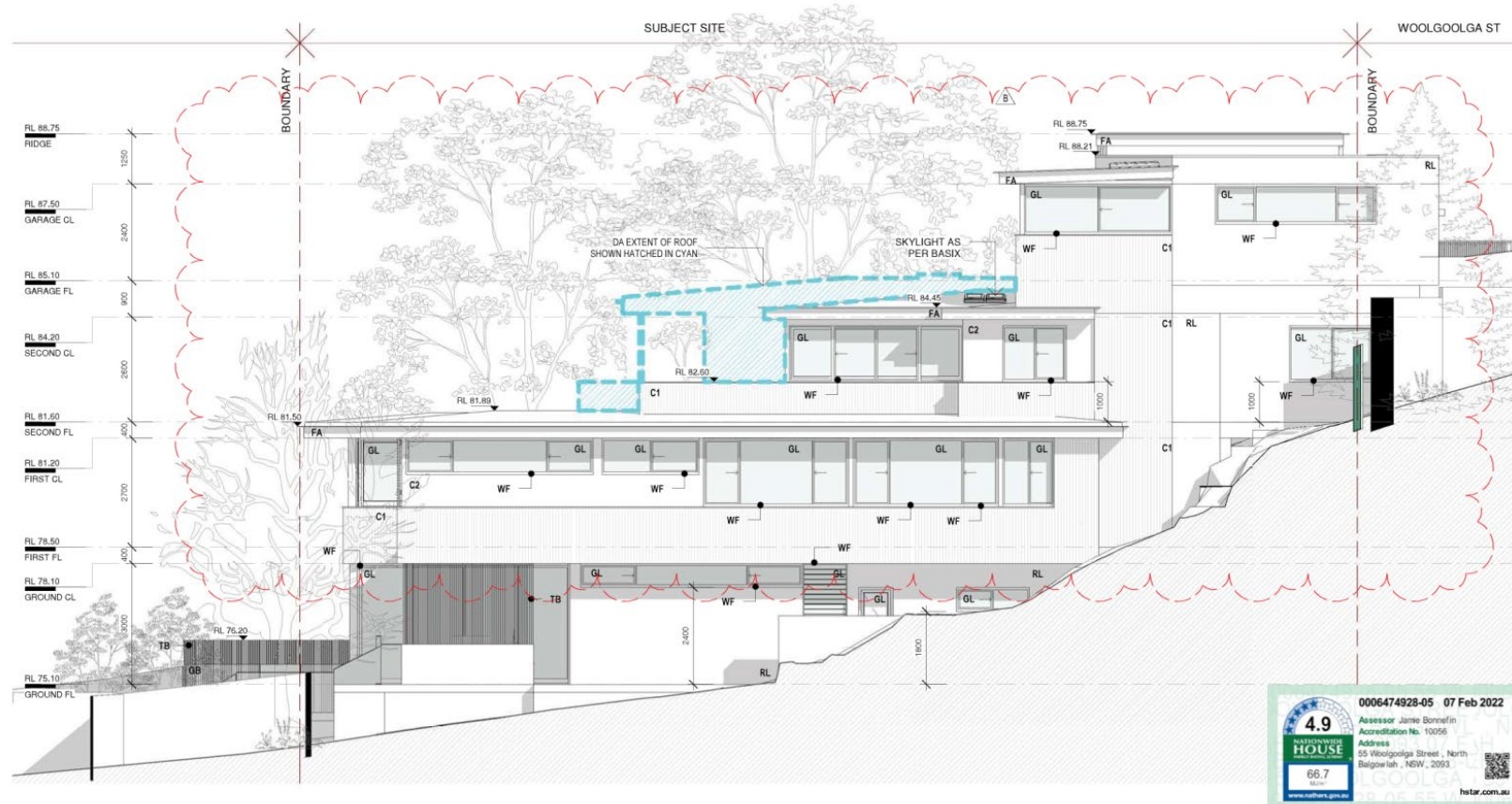
Subo 313 - 49 Queens Road Fire Dock NSW 2046
(02) 9570 2421 | PO Box 981 Fire Dock NSW 2046
www.ursino.com.au

REGISTERED ARCHITECT: Robert Ursino NSW ARB No: 10565

DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION

REVISION	DESCRIPTION	DATE	LEGEND & NOTES	CLIENT	SCALE	DRAWING TITLE
A	DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION	20.09.2021	<ul style="list-style-type: none"> Ⓢ SMOKE DETECTOR WM WASHING MACHINE DRY DRYER SL SKYLIGHT --- ROOT PROTECTION ZONE --- TREE PROTECTION ZONE 	PRYOR	1:100	WEST ELEVATION
B	ADDITIONAL INFORMATION - NOT FOR CONSTRUCTION	01.02.2022	<ul style="list-style-type: none"> ADDITION TO BUILT FORM FROM DA ADDITION TO ROOF FORM FROM DA REDUCTION TO BUILT FORM FROM DA REDUCTION TO ROOF FORM FROM DA 	ADDRESS: 55 WOOLGOOLGA ST NORTH BALGOWLAH NSW 2093	DRAWN BY: LC PROJECT NO: 21.05	DESIGNED BY: RU REV: B DATE: 01.02.2022 DRAWING NO: A503

- MATERIALS LEGEND
(REFER TO DA001)
- RL - RENDER - LIGHT
 - C1 - METAL CLADDING
 - SC - METAL SCREEN
 - GB - GLASS BALUSTRADE
 - DK - DECKING
 - FA - FASCIA
 - GL - GLASS
 - WF - WINDOW FRAMES
 - C2 - FC CLADDING
 - RO - ROOF
 - DR - DRIVEWAY
 - TB - TIMBER BATTEN
 - QU - GUTTER



2 EAST ELEVATION
1:100

URSINO ARCHITECTS

Subo 313 - 49 Queens Road Five Dock NSW 2046
(02) 9570 2421 | PO Box 981 Five Dock NSW 2046
www.ursino.com.au

REGISTERED ARCHITECT: Robert Ursino NSW ARB No: 10565

REVISION	DESCRIPTION	DATE	LEGEND & NOTES	CLIENT	SCALE	DRAWING TITLE
A	DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION	20.09.2021	<ul style="list-style-type: none"> Ⓢ SMOKE DETECTOR WM WASHING MACHINE DRY DRYER SAL SKYLIGHT --- ROOT PROTECTION ZONE --- TREE PROTECTION ZONE 	PRYOR	1:100	EAST ELEVATION
B	ADDITIONAL INFORMATION - NOT FOR CONSTRUCTION	01.02.2022	<ul style="list-style-type: none"> ADDN TO BUILT FORM FROM DA ADDN TO ROOF FORM FROM DA REDUCTION TO BUILT FORM FROM DA REDUCTION TO ROOF FORM FROM DA 	55 WOOLGOOLGA ST NORTH BALGOWLAH NSW 2093	LC RU 21.05	DATE 01.02.2022 DRAWING NO. A504

DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION

Suite 1 No.9 Narabang Way Belrose NSW 2085 • acn 121 577 768
t (02) 9986 2535 • f (02) 99863050 • www.bbfplanners.com.au

BostonBlythFleming
Town Planners

8th February 2022

**Updated clause 4.6 variation request – Height of buildings
New dwelling house
55 Woolgoolga Street, North Balgowlah**

1.0 Introduction

In the preparation of this updated clause 4.6 variation request consideration has been given to the following amended Architectural plans prepared by Ursino Architects:

A101	BASIX REQUIREMENTS	B	01.02.2022
A201	SITE ANALYSIS	A	20.09.2021
A202	SITE PLAN	B	01.02.2022
A203	DEMOLITION PLAN	A	20.09.2021
A301	GARAGE FLOOR PLAN	B	01.02.2022
A302	SECOND FLOOR PLAN	B	01.02.2022
A303	FIRST FLOOR PLAN	B	01.02.2022
A304	GROUND FLOOR PLAN	B	01.02.2022
A305	REAR YARD PLAN	B	01.02.2022
A306	ROOF PLAN	B	01.02.2022
A307	POOL PLAN	A	20.09.2021
A401	SECTION AA	B	01.02.2022
A402	SECTION BB	B	01.02.2022
A403	SECTION CC	B	01.02.2022
A501	NORTH ELEVATION	B	01.02.2022
A502	SOUTH ELEVATION	B	01.02.2022
A503	WEST ELEVATION	B	01.02.2022
A504	EAST ELEVATION	B	01.02.2022
A601	CALCULATIONS	B	01.02.2022
A602	CONSTRUCTION MANAGEMENT PLAN	B	01.02.2022
A701	SHADOW DIAGRAMS - JUNE 21 - 9AM	B	01.02.2022
A702	SHADOW DIAGRAMS - JUNE 21 - 10AM	B	01.02.2022
A703	SHADOW DIAGRAMS - JUNE 21 - 11AM	B	01.02.2022
A704	SHADOW DIAGRAMS - JUNE 21 - 12PM	B	01.02.2022
A705	SHADOW DIAGRAMS - JUNE 21 - 1PM	B	01.02.2022
A706	SHADOW DIAGRAMS - JUNE 21 - 2PM	B	01.02.2022
A707	SHADOW DIAGRAMS - JUNE 21 - 3PM	B	01.02.2022
A708	ELEVATIONAL SHADOWS 01 - WINTER SOLSTICE	B	01.02.2022
A709	ELEVATIONAL SHADOWS 02 - WINTER SOLSTICE	B	01.02.2022
A710	SHADOW BREAKDOWN - JUNE 21 - 12 PM	B	01.02.2022
A711	SHADOW BREAKDOWN - JUNE 21 - 1 PM	B	01.02.2022
A712	SHADOW BREAKDOWN - JUNE 21 - 2PM	B	01.02.2022
A713	SHADOW BREAKDOWN - JUNE 21 - 3PM	B	01.02.2022
A714	BUILDING ENVELOPE STUDY	B	01.02.2022
A720	CUT AND FILL PLAN	A	20.09.2021
A721	HEIGHT PLANE ANALYSIS	B	01.02.2022

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *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.

2.0 Warringah Local Environmental Plan 2011 (WLEP)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of Warringah Local Environmental Plan 2011 (WLEP) the height of a building on the subject land is not to exceed 11 metres in height. The objectives of this control are as follows:

- a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*
Building height is defined as follows:

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

It has been determined that the southern edge of the entrance pathway awning breaches the 8.5 metre height of building standard by between 300mm (3.5%) and 540mm (6.3%) with the southern edge of the garage, entry foyer, lift and stairs breaching the standard by between 2.080 metres (24.4%) and 2.370 metres (27.8%).

Further, the south-eastern corner of the second floor roof form also breaches the height standard by a maximum of 500mm (5.8%) however this is limited to a small and constrained area of the building located above a natural depression in the landform as depicted on the building envelope blanket diagram at Figure 1 below.



Figure 1 - Building height plane blanket showing the breaching elements above the 8.5 metre height standard.

The balance of the development sits comfortably below the 8.5 metre building height standard.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of WLEP provides:

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

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of WLEP provides:

- (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.*

This clause applies to the clause 4.3 WLEP Height of Buildings Development Standard.

Clause 4.6(3) of WLEP provides:

- (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.*

The proposed development does not comply with the height of buildings provision at 4.3 of WLEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of WLEP provides:

- (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 Director-General has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 18-003 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of WLEP provides:

- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act.

Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of WLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of WLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of WLEP?

4.0 Request for variation

4.1 Is clause 4.3 of WLEP a development standard?

The definition of “development standard” at section 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 4.3 WLEP prescribes a height provision that seeks to control the height of certain development. Accordingly, clause 4.3 WLEP is a development standard.

4.2 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Comment: Development within the site’s visual catchment is characterised by 1, 2 and 3 storey detached style dwelling houses within landscape settings. Buildings on steeply sloping sites generally step down the landform in response to topography with some properties on steeply sloping sites clearly breaching the 8.5 metre height standard consistent with the built form outcome established by the immediately adjoining property to the west No. 57 Woolgoolga Street.

The consideration of building compatibility is dealt with in the Planning Principle established by the Land and Environment Court of New South Wales in the matter of *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*. At paragraph 23 of the judgment Roseth SC provided the following commentary in relation to compatibility in an urban design context:

22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.

The question is whether the building height breaching elements contribute to the height and scale of the development to the extent that the resultant building forms will be incompatible with the height and scale of surrounding and nearby development.

That is, will the non-compliant building height breaching elements result in a built form which is incapable of coexisting in harmony with surrounding and nearby development to the extent that it will appear inappropriate and jarring in a streetscape and urban design context.

The proposed development presents as a single storey building form to the street before stepping down the site over a series of levels which have a predominant 2 storey presentation as viewed from surrounding properties. In this regard, the building height breaching elements will not be readily discernible in a streetscape context and will not be perceived as inappropriate or jarring having regard to the height and scale of the immediately adjoining properties at No's 53 and 57 Woolgoolga Street. I note that letters of support have been received from both immediately adjoining Woolgoolga Street fronting properties copies of which are at Attachment 1.

In this regard, I have formed the considered opinion that the non-compliant building elements will not contribute to the height and scale of the development to the extent that the resultant building forms will be incompatible with the height and scale of surrounding and nearby development. That is, the non-compliant building height breaching elements will not result in a built form which is incapable of coexisting in harmony with surrounding and nearby development to the extent that it will appear inappropriate or jarring in a streetscape and broader urban context.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191* I have formed the considered opinion that most observers would not find the proposed development, withstanding the building height breaching elements, offensive, jarring or unsympathetic in a streetscape and urban context.

In this regard, it can be reasonably concluded that notwithstanding the building height breaching elements the development is compatible with surrounding and nearby development and accordingly the proposal achieves this objective.

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

Comment: Having attended the site and determined potential view lines over the site, I have formed the considered opinion that the height of the development, and in particular the non-compliant building height elements, will not give rise to unacceptable visual or view loss impacts. In forming this opinion, I note that the building presents as a compliant single storey structure to the street with the compliant portions of the development obscuring the non-compliant building edges as viewed from the north with the non-compliant building elements sitting back behind the rear building alignment established by the 2 immediately adjoining properties such as to not project into available view lines.

I am also of the opinion that the building height breaching elements will not give rise to unacceptable visual privacy impacts particularly given that the only habitable floor space located above the 8.5 m height standard is located at the garage/entry-level where the development immediately adjoins the dwelling houses at No's 53 and 57 Woolgoolga Street with the design and juxtaposition of development in this location ensuring the maintenance of appropriate visual privacy between principal living and private open space areas.

In relation to solar access, I rely on the shadow diagrams at Attachment 2 which demonstrate that the non-compliant building height elements will not give rise to unacceptable loss of solar access with the highly articulated and modulated building design ensuring that significant portions of the development sit well below the 8.5 metre height standard and in doing so minimising associated shadowing impacts.

Notwithstanding the non-compliant building height elements, I am satisfied that the development minimises visual impact, disruption of views, loss of privacy and loss of solar access to surrounding development and the public domain and to that extent achieves this objective.

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

Comment: The non-compliant building height elements will not be discernible as viewed from any coastal or bushland environments. This objective is achieved withstanding the building height breaching elements proposed.

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

Comment: For the reasons previously outlined I am satisfied that the non-compliant building height elements will not be visually prominent as viewed from the street or any public area. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant portions of the building, offensive, jarring or unsympathetic in a streetscape context.

Having regard to the above, the non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The subject property is zoned R2 Low Density Residential zone pursuant to WLEP 2011. The developments consistency with the stated objectives of the zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

Response: The proposed development reinstates a single dwelling house on the site reflecting a low-density residential outcome/ environment for the site which will provide for the housing needs of the community. The proposal achieves this objective notwithstanding the building height breaching elements.

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

Response: N/A

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

Response: The development maintains the majority of significant trees on the site ensuring that the dwelling house sits within a landscaped setting in harmony with the natural environment of Warringah. The proposal achieves this objective notwithstanding the building height breaching elements.

The proposed development, notwithstanding the height breaching elements, achieve the objectives of the zone.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the zone and the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.

4.3 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *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.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient Environmental Planning Grounds

In my opinion, there are sufficient environmental planning grounds to justify the building height variation as outlined below.

Ground 1 – Topography of the site

The site falls approximately 12 metres across its surface in a southerly direction towards its rear boundary making strict compliance with the 8.5 m height standard difficult to achieve while striking a balance between the provision of appropriately sized floor plates, excavation and building height.

The highly articulated and modulated building form steps down the site in response to topography with the breaching elements confined to the southern edges of the upper level floor plates as the site falls away steeply within the proposed building footprint.

Strict compliance at the garage/ entry level would significantly compromise the disabled access arrangement associated with the development which requires the provision of both internal stair and lift access from the same level as the garaging which is set back into the site 6.5 metres to comply of the front building line setback. In this regard, the lift would need to be relocated to within the side boundary setback adjacent to the garage where it would have a greater visual impact as viewed from the street than the design currently proposed.

Such outcome would compromise the disabled access and amenity outcomes for the site without any measurable benefit in terms of reduced streetscape or residential amenity impacts. This would represent poor design.

Ground 2 - Objectives of the Act

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

Approval of the building height variation will achieve this objective given the contextually appropriate nature of the building form and the compatibility of the dwelling with the height and scale of surrounding and nearby development.

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

Approval of the variation of the building height standard will facilitate safe and convenient disabled access to the site and promote good contextually appropriate design which will facilitate enhanced amenity outcomes to and from the development.

The building is of good design quality with the variation facilitating a height and floor space that provides for contextual built form compatibility consistent with objective (g) of the Act.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test.

The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

That said, I note that the proposed revised clause 4.6 provisions as recently identified by the NSW Department of Planning indicates that the clause 4.6 provisions may be changed such that the consent authority must be directly satisfied that the applicant's written request demonstrates the following essential criteria in order to vary a development standard:

- *the proposed development is consistent with the objectives of the relevant development standard and land use zone; **and***
- *the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened. In deciding whether a contravention of a development standard will result in an improved planning outcome, the consent authority is to consider the public interest, environmental outcomes, social outcomes or economic outcomes.*

In this particular instance, I am satisfied that the proposed development is consistent with the objectives of the relevant development standard and land use zone and the contravention of the standard will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.

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

4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the R2 Low Density Residential zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.5 Secretary’s concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a nonnumerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.*

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA

Director

Attachment 1 Letters of support from immediately adjoining property owners

Attachment 2 Shadow diagrams

ITEM 4.2	DA2021/2446 - 60 STARKEY STREET, FORESTVILLE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
AUTHORISING MANAGER	Rodney Piggott
TRIM FILE REF	2022/223125
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is a member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. to DA2022/2446 for alterations and additions to a dwelling house on land at Lot 17 DP 220075, 60 Starkey Street, Forestville, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2446
----------------------------	-------------

Responsible Officer:	Danielle Deegan – DM Planning
Land to be developed (Address):	60 Starkey Street, FORESTVILLE NSW 2087
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP 2011 - R2 Low Density Residential
Development Permissible:	Yes, with consent
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	David Benoit Hellot Danielle Teutsch
Applicant:	David Benoit Hellot

Application Lodged:	08/12/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential – Alterations and Additions
Notified:	14/12/2021 to 19/01/2022
Advertised:	Not advertised
Submissions Received:	Four (4)
Clause 4.6 Variation:	No
Recommendation:	Approval subject to conditions

Estimated Cost of Works:	\$95,000
---------------------------------	----------

EXECUTIVE SUMMARY

The application seeks development consent for alterations and additions to the existing dwelling house including the construction of a first-floor addition.

The application is referred to the Local Planning Panel at due to the owner being a Council staff member who is principally involved in the exercise of council's functions under the EP&A Act 1979.

The key planning issue in the assessment of this proposal is potential amenity impacts to the adjoining dwellings to the south and south-west of the subject site.

Public exhibition of the proposal resulted in the receipt of four (4) submissions, all of which raise overshadowing and privacy concerns. Other concerns include the height, bulk and scale of the proposal and adequacy of documentation.

In response to neighbour concerns, the applicant submitted a revised design to assist in minimising potential amenity impacts. These include a change in roof form and a change to the south-facing windows.

The proposal, as amended, has been found to be consistent with the objectives of all relevant legislation, plans and policies and is recommended for approval, subject to conditions.

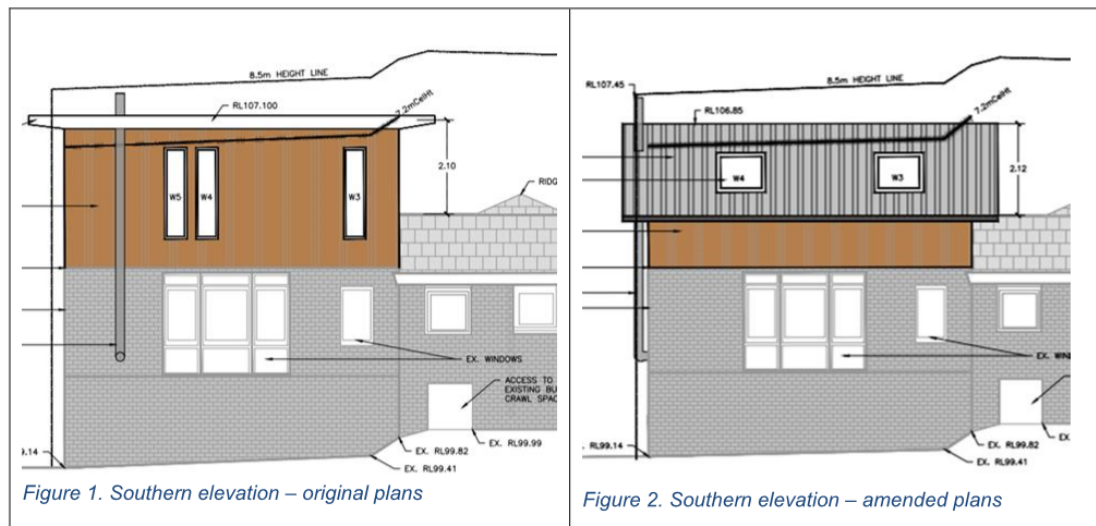
PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing dwelling house, comprising of:

- Minor alteration and addition to the ground floor to accommodate a stairwell
- First floor addition with a gross floor area of 35m², comprising two bedrooms and a north-facing timber balcony.

AMENDED PLANS

Due to concerns raised by neighbouring properties, the applicant submitted a revised design of the proposed first floor addition which replaced a skillion roof with a 'folded' roof form and changes to the windows in the southern elevation. As seen in Figures 1 and 2 below, the 3 x vertical windows originally proposed have been changed to 2 x roof windows.



In accordance with the provisions of the Northern Beaches Community Participation Plan, as the amendments are minor and will result in a lesser impact on nearby properties and the public domain, re-notification of the application was not required.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;



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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 17 DP 220075 60 Starkey Street FORESTVILLE NSW 2087
Detailed Site Description:	<p>The subject site consists of one (1) battle-axe allotment located on the western side of Starkey Street.</p> <p>The site is irregular in shape with a frontage of 5.645m to Starkey Street and a depth of approximately 95m. The site has a surveyed area of 1392m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single storey residential dwelling.</p> <p>The site falls approximately 6m from the north-west corner to Starkey Street. There is a cliff adjacent to the southern boundary with the land to south, approximately 6 lower than the subject site.</p> <p>The site contains a driveway from Starkey Street leading to a metal carport in the centre of the site. A single storey brick and tile dwelling house is located higher up the site. The site is heavily vegetated.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential dwellings, in landscaped settings.</p>



SITE HISTORY

The original dwelling house was designed in 1968 with the later addition at the rear designed in 1970.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Ms Kira Robson	7 Keegan Place, Forestville
Mrs Sunca Padovan	6 Keegan Place, Forestville
Ms Jo May	8 Keegan Place, Forestville
Mr Radoslav Kardum	5 Tingira Place, Forestville

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

- Privacy**
 Concern is raised that the proposed 3 x south-facing windows will overlook the properties to the south (6, 7 & 8 Keegan Place) and south-west (5 Tingira Place)

Comment: This issue is discussed in detail in the Warringah Development Control Plan (WDCP) section of this report.

In summary, the assessment finds that the privacy impacts are not unreasonable.



- **Overshadowing**

Concerns are raised that the proposed first floor addition will result in unreasonable overshadowing to the adjoining properties to the south and south-west.

Comment: This issue is discussed in detail in the WDCP section of this report.

In summary, the assessment finds that the overshadowing impacts are not unreasonable.

- **Height, Bulk and scale**

Concerns are raised that the building height, bulk and scale are inappropriate particularly given the elevated nature of the site.

Comment: The amended proposal complies with building height, side boundary setbacks and side boundary envelope controls. The minor non-compliances with wall height and rear boundary setback are addressed in the WDCP section of this report.

- **Setback to southern boundary**

The rear boundary setback requirement of 6m should be used along the southern boundary as this is the rear boundary for 6,7 & 8 Keegan Place.

Comment: The applicable boundary setback to the southern boundary is 0.9m. The proposed first floor addition provides a generous setback (4.6m – 5.8m) to the southern boundary.

- **Document deficiencies (survey, shadow diagrams)**

Concerns are raised that the survey does not include the RLs of adjoining properties and that the shadow diagrams are not clear and do not show the required detail.

Comment: Council does not require the survey to show RLs on adjoining land. It is noted, however, that land contours have been overlaid on the site plan and shadow diagrams and these are adequate to show the slope of the land.

A 'certification of shadow diagrams' has been provided by the applicant in support of the proposal. The amended shadow diagrams include references to 9am, 12pm and 3pm on June 21st.

The WDCP does not require the RLs of adjacent properties, vegetation or boundary fences to be shown on shadow diagrams. The shadow diagrams provided allow for a reasonable assessment of shadowing impacts.

REFERRALS

There were no internal or external referrals required.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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	Warringah 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 regulations	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to revised architectural plans.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. / This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p>

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

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. A439714_02 dated 8 March 2022).

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

WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

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

Principal Development Standards

Standard	Requirement	Proposed	Variation	Complies
Height of Buildings	8.5m	7.7m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
7.2 Earthworks	Yes
6.4 Development on sloping land	Yes

WARRINGAH DEVELOPMENT CONTROL PLAN

Built Form Controls

Built Form	Requirement	Proposed	% variation*	Complies
B1 Wall height	7.2m	7.6m	5.5%	No
B3 Side boundary envelope	4m (North)	Within envelope	-	Yes
	4m (South)	Within envelope		
B5 Side boundary setbacks	0.9m (North)	12m	-	Yes
	0.9m (South)	3.6m – 5.84m	-	Yes
B7 Front boundary setbacks	6.5m	Unaltered	-	Yes
B9 Rear boundary setbacks	6m (West)	5.3m – 6.5m	11.6%	No
D1 Landscaped Open Space (LOS) and Bushland setting	40% (556.4m ²)	64% (886m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

B1 Wall height

Description of Non-compliance

Clause B1 requires that walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).

The western wall of the first-floor addition has a variable wall height of between 7m to 7.6m with the minor (400mm) non-compliance occurring at the top of the wall line, the result of the raked ceilings and sloping land.

Merit consideration

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

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

Comment:

Given the difference in levels and generous boundary setbacks, the proposal will have minimum visual impact when viewed from the adjoining properties to the south and south-west.



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

Comment:

The proposed addition does not require the removal of any vegetation is generally beneath the existing tree canopy.

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

Comment:

The non-compliant area of wall height will not give rise to any adverse public or private view affectation.

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

Comment:

The non-compliant area of wall height will not give rise to any adverse amenity impacts on nearby properties.

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

Comment:

The proposed addition is within the existing building footprint and does not give rise to any excavation.

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

Comment:

The amended roof design represents an innovative roof form. It is designed to reduce privacy and shadowing impacts on the properties located to the south.

Given that the proposed development is consistent with the objectives for wall height, the minor variation to this control is supported in this instance.

B9 Rear Boundary Setbacks

Description of non-compliance

A 6m rear setback applies to the site. The WDCP requires that the rear setback area is to be landscaped and free of any above or below ground structures. Most of the proposed works sit comfortably behind the 6m rear setback control. However, consistent with the ground floor below, the north-western corner of the proposed first floor addition encroaches into the rear setback. The setback to the rear boundary varies from 6.5m to 5.3m.

Merit consideration

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

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

Comment:

The proposed addition is within the existing building footprint and does not require the removal of any vegetation. The existing landscape areas are maintained. The site includes an abundance of deep soil planting.

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



Comment:

The proposal provides an open rear yard area. The proposed addition is located wholly above the existing ground floor and therefore maintains the established rear setback.

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

Comment:

The dwelling additions have been orientated to provide generous setbacks to all boundaries. The windows have been located to ensure that privacy with adjoining properties is maintained. A recommended condition of consent will require the erection of a privacy screen on the western end of the proposed balcony to prevent overlooking of the adjoining property to the west (4 Tingira Place).

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

Comment:

The dwelling is uniquely located on a battle-axe lot where there is no consistent subdivision pattern and no established rear setback. The proposal maintains the rear setback of the existing dwelling on the site.

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

Comment:

The proposal has been designed to maintain privacy with adjoining properties. As noted above, a privacy screen on the western end of the balcony will maintain privacy with the adjoining property to the west.

Given that the proposed development is consistent with the objectives for rear boundary setback the variation to this control is supported in this instance.

D6 Access to Sunlight

Clause D6 of WDCP requires that:

At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

Objections have been received from the adjoining dwellings to the south and south-west regarding additional overshadowing resulting from the proposal.

The shadow diagrams submitted with the application show that there will be some minor additional shadowing to the rear of 5 Tingira Place (at 9am), 6 & 7 Keegan Place (at 12 noon) and 7 Keegan Place (at 3pm).

However, the sunlight available to the private open spaces of these adjoining dwellings will not be impacted by more than 3 hours between 9am and 3pm on 21 June.

The proposal therefore ensures that reasonable access to sunlight is maintained and consequently satisfies the objective of the control.

D8 Privacy

The proposed roof windows in the southern section of the roof are angled toward the sky and therefore will reduce the potential for overlooking of the properties located to the south. The proposed windows are more than 9m and at different levels to the windows in adjoining dwellings. To further



mitigate against privacy impacts, a recommended condition of consent will require that the sill height of windows W3 and W4 be increased to 1.7m above finished floor level.

As previously noted, potential overlooking from the proposed first floor balcony has been addressed by a recommended condition of consent requiring a privacy screen on the western edge of the balcony.

7.12 CONTRIBUTIONS

As the cost of works is less than \$100,000, the proposal is not subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2022/2446 for alterations and additions to a dwelling house on land at Lot 17 DP 220075, 60 Starkey Street, FORESTVILLE, subject to the conditions printed below:

CONDITIONS

1. APPROVED PLANS AND SUPPORTING DOCUMENTS

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
04 Site Plan	05.03.2022	D.Teutsch & D. Helliott
07 Demolition Plan	05.03.2022	D.Teutsch & D. Helliott
08 D-Ground floor	05.03.2022	D.Teutsch & D. Helliott
09 D-1Floor	05.03.2022	D.Teutsch & D. Helliott
10 D-Roof	05.03.2022	D.Teutsch & D. Helliott
11 D-Elevation SN	05.03.2022	D.Teutsch & D. Helliott
12 D-Elevation EW	05.03.2022	D.Teutsch & D. Helliott
13 D-Sections	05.03.2022	D.Teutsch & D. Helliott

Engineering Plans		
Drawing No.	Dated	Prepared By
6001A, 17 Drainage Plan	05.03.2022	Not stated

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

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	2/12/2021	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.

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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

5. Security Bond

A bond (determined from cost of works) of **\$1,500** and an inspection fee in accordance with Council's Fees and Charges paid as security 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).



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

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

6. Stormwater Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy. All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifying Authority prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

7. Amendments to the approved plans

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

- The south-facing bedroom 3 & 4 roof windows W3 and W4, are to have a minimum sill height of 1.7m measured from finished floor level.
- A 1.8m high privacy screen is to be erected along the western edge of the first floor balcony.

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

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

8. Boundary Identification Survey

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**9. Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 -The Demolition of Structures.

Reason: For the protection of the environment and human health.

10. Installation and Maintenance of Sediment Control

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

11. 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**12. Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Certifying Authority prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and



associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

13. House/ Building Number

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

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

Reason: Proper identification of buildings.



10/03/2022, DA 00-02.dwg



GENERAL NOTES

FOR APPROVAL ONLY
SUBJECT TO DETAIL DESIGN FOR
CONSTRUCTION

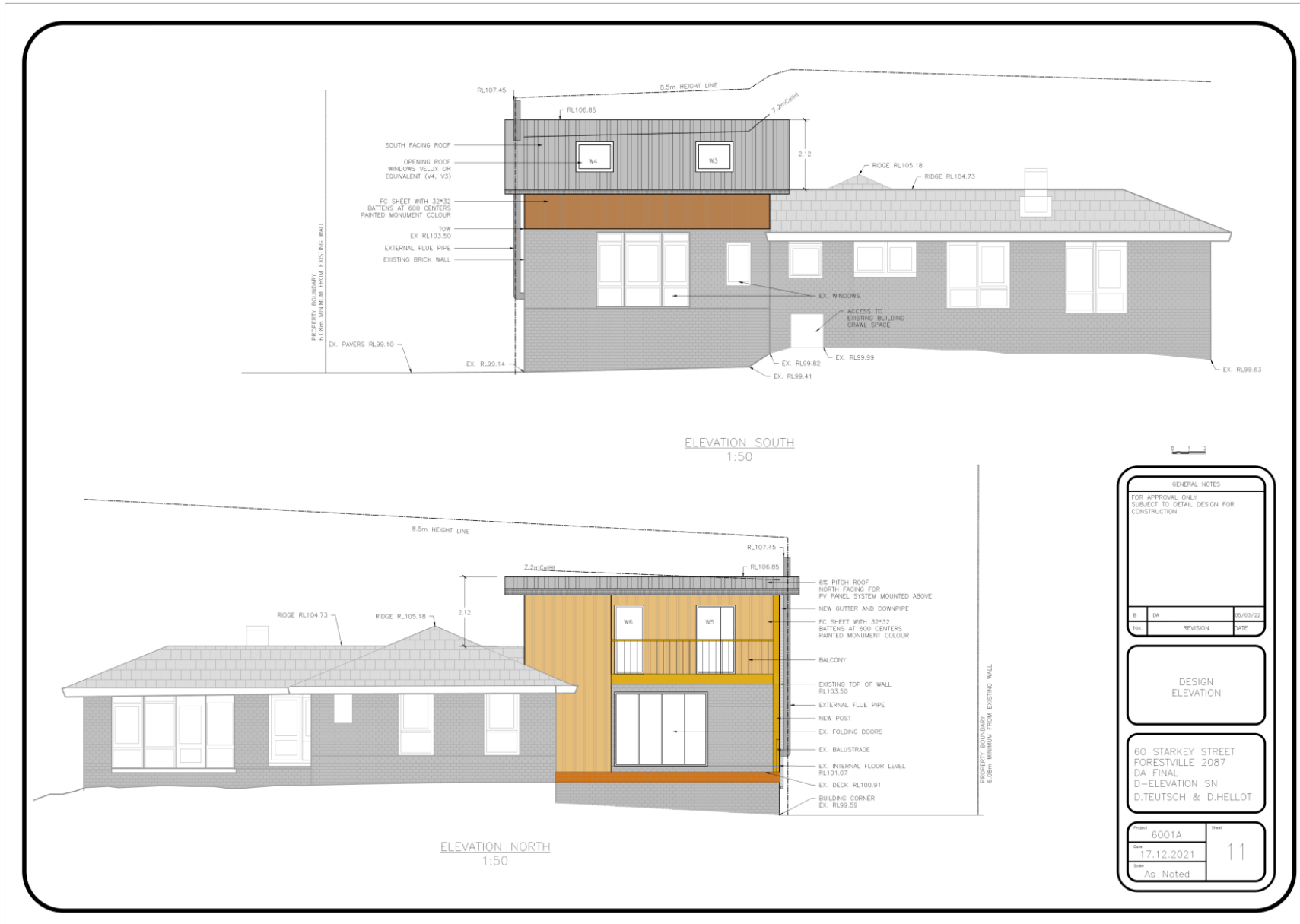
ID	DATE	REVISION	DATE

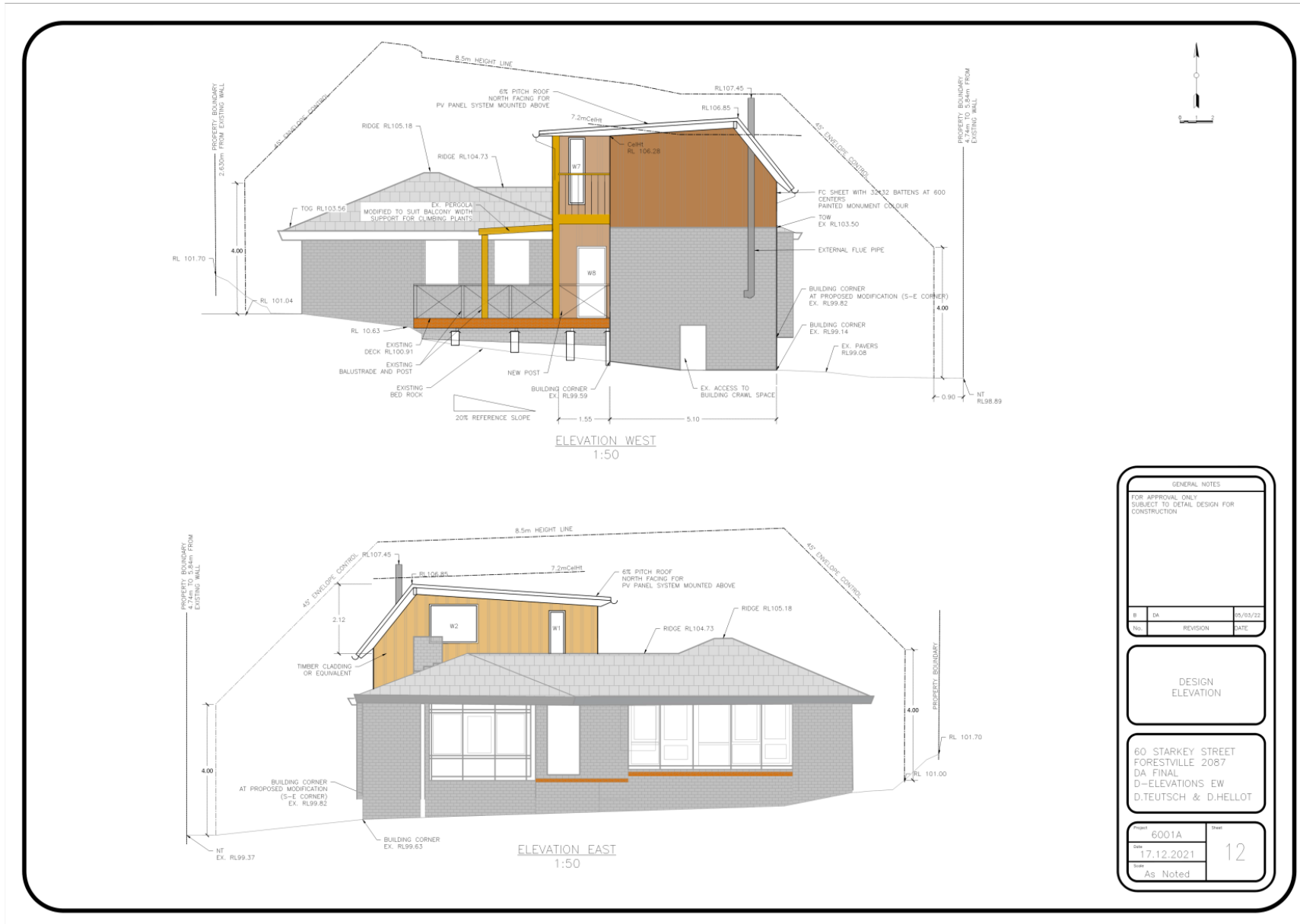
EXISTING ELEVATIONS

60 STARKEY STREET
FORESTVILLE 2087
DA FINAL
EX ELEVATIONS
D.TEUTSCH & D.HELLOT

Project	6001A	Sheet	06
Date	17.12.2021		
Notes	As Noted		

10/03/2022 DA 00 42.dwg





GENERAL NOTES

FOR APPROVAL ONLY
SUBJECT TO DETAIL DESIGN FOR
CONSTRUCTION

No.	DATE	REVISION	DATE

DESIGN
ELEVATION

60 STARKEY STREET
FORESTVILLE 2087
DA FINAL
D-ELEVATIONS EW
D.TEUTSCH & D.HELLOT

Project	6001A	Sheet	
Date	17.12.2021		12
	As Noted		

5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	DA2021/2409 - 9 EUSTACE STREET, MANLY - ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT BUILDING
AUTHORISING MANAGER	Rodney Piggott
TRIM FILE REF	2022/222962
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants 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.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/2409 for Alterations and additions to a residential flat building on land at Lot 1 SP 31425, 1 / 9 Eustace Street, Manly, Lot 5 SP 31425, 5 / 9 Eustace Street, Manly, Lot CP SP 31425, 9 Eustace Street, Manly subject to the conditions set out in the Assessment Report.
-

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2409
Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 1 SP 31425, 1 / 9 Eustace Street MANLY NSW 2095 Lot 5 SP 31425, 5 / 9 Eustace Street MANLY NSW 2095 Lot CP SP 31425, 9 Eustace Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a residential flat building
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Gary Paul McInnes Daniel Robert Morris Geraldine Woo Proprietors of Strata Plan 31425
Applicant:	Cradle Design
Application Lodged:	09/12/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/12/2021 to 19/01/2022
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.4 Floor space ratio: 24.6%
Recommendation:	Approval
Estimated Cost of Works:	\$ 369,876.00

EXECUTIVE SUMMARY

The application is for alterations and additions to a residential flat building (RFB) which mainly relates to Unit 2 and Unit 7 within the building. The proposal is referred to the Northern Beaches Local Planning Panel as the new work increases the existing variation to the floor space ratio (FSR) that currently exceeds 10% of the FSR development standard pursuant to Manly Local Environmental Plan (LEP) 2013. The existing FSR non-compliance for the RFB is 18.2% and is proposed to be increased to 24.6% (0.93:1), being above the 0.75:1 requirement.

The principle assessment issues for the proposal relate to the Apartment Design Guide (ADG) and design considerations relating to the building alterations that affect the FSR. In this regard, the additional floor area is mainly associated with part enclosure of an large upper terrace area for a rumpus and bathroom. The main structure of the flat building in terms of wall lines and setbacks, including its maximum overall height will remain unchanged. The new floor space to be added is 14.4sqm for Unit 1 (ground level) and 19.3sqm for Unit 5 (beside the rooftop stair access). The additional floor areas are suitably positioned to the existing built form and do not create unreasonable amenity impacts. Therefore, the Clause 4.6 variation is supported

The proposal is considered to be reasonable in the circumstances whereby the split level design of the existing building and integrated design of the new work will not create unreasonable amenity impacts for adjacent land. All internal referrals support the proposal subject to conditions, including building (fire) code requirements. No outstanding issues are raised pursuant to the notification and submission issues raised regarding privacy amenity, views, overshadowing, bulk, FSR and noise impacts. These matters have been considered in context of the design and are considered to be satisfactory having regard to the Manly Development Control Plan (DCP) and Manly LEP.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks approval for alterations and additions to a residential flat building and in particular relate to "Unit 1" and "Unit 5" within the building. Details of the works involve:

Part demolition, site preparation and ancillary site works.

UNIT 1 Level 2 RL6.23

- Extending existing kitchen/ living area towards south boundary including building up of boundary wall to achieve fire separation.
- Connection of existing north and east terrace areas
- Internal modifications to kitchen, living/ dining area and new study.
- Installation of a 1.5m high sliding gate to the Unit 1 entrance stair at the front boundary
- No changes to strata areas or car parking are proposed as part of this application.
- Additional Unit 1 floor area of the additions 14.4sqm

UNIT 5 Level 4 RL11.6

- Adding an enclosed room area around the stair entry (upper terrace) located on the roof area to include a rumpus and bathroom.
- Removal of one window to the kitchen, replaced with brickwork to match existing (remaining southern glazing to remain)
- Internal alterations to bedrooms.
- No changes to strata areas or car parking are proposed as part of this application.
- Roof RL14.11 (existing higher roof element associated with Unit 8 is RL15.65)
- Additional Unit 5 floor area of the additions 19.3sqm

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 1 SP 31425 , 1 / 9 Eustace Street MANLY NSW 2095 Lot 5 SP 31425 , 5 / 9 Eustace Street MANLY NSW 2095 Lot CP SP 31425 , 9 Eustace Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site is on the western side of Eustace Street between West Esplanade and Sydney Road. The surveyed site area is 697.4 square metres (sqm) for the land area and the site contains a Strata Title apartment building containing 8 Units. The subject development work for this application is associated with Units No.1 and No.5 that are located on Level 2 and Level 4 respectively.</p> <p>The site falls from west to east. The existing strata apartments sit above a basement car park and steps up from Eustace Street to a public reserve behind.</p> <p>The surrounding neighbourhood is a mix of multi-residential apartments and mixed use development of varying heights, generally from 3 to 5 storeys.</p>

Manly wharf and foreshore are within 100 metres (m) south of the property, Manly oval to the north and Manly CBD to the east. The west boundary is council reserve hillside land with pathway connections to Rowe Street and Tower Street. No.9 Eustace has a back-gate access from the public footpath.

Vehicular and pedestrian access is currently via Eustace with the existing driveway running perpendicular to Eustace Street. The main pedestrian entry is located on the front boundary.

Map:



SITE HISTORY

Development Application No.DA3814/90 for alterations and additions to a residential flat building was approved by Council on 24 May 1990.

Development Application No.DA0039/2012 for alterations and additions to a residential flat building (Unit 3) was approved by Council on 13 April 2012.

Development Application No.DA0241/2016 for alterations and additions to a residential flat building (Unit 7) was approved by Council on 28 September 2016.

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	See discussion on “Environmental Planning Instruments” in this

Section 4.15 Matters for Consideration	Comments
of any environmental planning instrument	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	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&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in this case to address fire engineering solutions required for the building separation and new work. The information is of routine assessment matter and does not require re-notification in accordance with the Community Participation Plan.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of</p>

Section 4.15 Matters for Consideration	Comments
	<p>Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. Considerations made during the assessment include overshadowing, construction activity, privacy, acoustic amenity, drainage, height and building design, landscaping, views and ADG requirements as applicable.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development,. subject to conditions</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

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 14/12/2021 to 19/01/2022 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 3 submission/s from:

Name:	Address:
Samuel John Paris	5 / 11 Eustace Street MANLY NSW 2095
Mrs Barbara Ann Bray	8 / 9 Eustace Street MANLY NSW 2095
Miss Vida Claire Jenkins	7 Eustace Street MANLY NSW 2095

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

1. Solar Impact
2. View impact
3. FSR
4. Privacy

The matters raised within the submissions are addressed as follows:

- 1. *Concern that the proposed additions may cause reduce direct sunlight for the solar panels installed on No.7 Eustace Street*

Comment:

This issue has been considered in accordance with *Clause 3.4.1 Sunlight Access* and *Clause 3.1.4.2* (including specific 6 hour provision of solar access to PV cells) as well as also regard to *Part 3.5.2* of the *Manly DCP*. While mid winter is a period when photovoltaic cells may be operating at lowest output efficiency (including consideration of winter weather conditions) the solar diagrams No.DA508 to DA510 drawn by Cradle Architecture, dated 12.2.2021 demonstrate that the change to overshadowing is marginal and across the majority of the day on 21 June overshadowing will not be significantly increased across the roof area expanse of the adjacent land. The position of the solar cells and overshadowing will affect a minor section of the solar panels, only between 12pm and 3pm and is a transitioning shadow. Solar access will be maintained across the majority of the solar panel area in that the shadow transition during the day does not last longer than 1 hour in a single panel section (unit PV cell), and the shadow affects only one edge of the closest cell bank. Given the maximum building height is 11m, with the proposed additions at a compliant height and the adjacent building roof having the solar cells (old squash court building / converted) at No. 7 Eustace Street is 6.2m high the solar impact on the solar cells is acceptable on merit.

In summary, direct solar access will not be unreasonably affected to adjacent land and this issue does not warrant refusal of the development application.

- 2. *Concern that the additional building bulk will impact the view outlook from No.11 Eustace Street including landscape features / outlook toward the west and along Eustace Street.*

Comment:

The additions to the roof terrace will surround an existing brick staircase shelter to create an extension to the available internal living space within Unit 5. For views, the new additions have been assessed in detail under *Clause 3.4.3 Maintenance of Views* within this report. In summary the view impact is an urban outlook and the scale, height and bulk of the additions are not considered unreasonable in terms of the floor space changes and view amenity impact across the side boundary area. This issue does not warrant refusal of the application.

- 3. *Concern that the proposal does not comply with floor space ratio and the height creates a sense of enclosure for adjacent land and a loss of amenity.*

Comment:

This issues has been considered in detail under *Clause 4.6 Exceptions to development Standards* within this report. In summary, the changes to building height is limited to the roof top additions but the overall maximum height of the building is unchanged. The roof additions have also been considered in detail under *Clause 4.4.2 First Floor and Roof Additions* within this report. The changes to the flat building are limited to private courtyard / terrace space and a detailed assessment has been made pursuant to SEPP 65. In conclusion, the generally amenity impacts are not unreasonable in the context of the applicable development controls and pattern of surrounding development. This issue does not warrant refusal of the application.

- 4. Concern that there will be a loss of privacy toward No.11 Eustace Street with high light windows and alterations to the building.

Comment:

This issue has been considered in detail under the heading *3.4.2 Privacy and Security* within this report. At the upper level the new roof additions of the rumpus include highlight window sills that are well above normal sill height and the small internal rumpus space would not create unreasonable overlooking privacy issues as the main windows open toward the street. The owner has discussed this issue with Council and agrees to specify (by condition) that the side rumpus window be translucent fixed glass. Other areas of the building remain consistent with existing / established privacy. This issue does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments			
Building Assessment - Fire and Disability upgrades	<p>Supported with conditions.</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>			
Parks, reserves, beaches, foreshore	<p>Supported without conditions.</p> <p>The development application is for alterations and additions to an existing apartment building. The development site adjoins Tower Hill Park that is located upslope of the property.</p> <p>Parks, Reserves and Foreshores raise no concerns.</p>			
Strategic and Place Planning (Heritage Officer)	<p>Supported without conditions.</p> <table border="1" data-bbox="558 1814 1337 1977"> <thead> <tr> <th>HERITAGE COMMENTS</th> </tr> </thead> <tbody> <tr> <td>Discussion of reason for referral</td> </tr> <tr> <td>The proposal has been referred to Heritage as the subject site adjoins a heritage item and in the vicinity of a heritage item:</td> </tr> </tbody> </table>	HERITAGE COMMENTS	Discussion of reason for referral	The proposal has been referred to Heritage as the subject site adjoins a heritage item and in the vicinity of a heritage item:
HERITAGE COMMENTS				
Discussion of reason for referral				
The proposal has been referred to Heritage as the subject site adjoins a heritage item and in the vicinity of a heritage item:				

Internal Referral Body	Comments																		
	<p>Item II237 - Reserve Park - Tower Reserve, Tower Hill</p> <p>Item I253 - Uniting Church - 4 West Promenade</p> <hr/> <p>Details of heritage items affected</p> <p>Details of the items as contained within the Manly heritage inventory is as follows:</p> <p>Item II237 - Reserve Park <u>Statement of significance:</u> Land used for early viewing point over Manly. Location of Camera obscura. Part of natural landscape together with Fig plantings. <u>Physical description:</u> Elevated land with extensive sandstone rock outcrop with some indigenous plants retained and 1880's plantings of Port Jackson Figs (Ficus Rubiginosa). Historically significant viewing point, natural rocks and cultural plantings.</p> <p>Item II253 - Uniting Church <u>Statement of significance:</u> Prominent part of a unified group of 1920s and 1930s buildings (3-8 West Promenade), the church is a significant landmark building forming a significant backdrop to Gilbert Park. <u>Physical description:</u> A dark brick Inter-War Romanesque style church with 3 entry doors with arched leadlight fanlights, a 4 storey spire with arched leadlight windows and arched vents, a copper dome and copper finial. Side windows are also arched and either stained glass or leadlight. Internally, the church ceiling is panelled, decorative, and has a central vault. The timber floor is raked towards the pulpit. The two storey church hall at the rear continues the Inter War Romanesque style. The whole building is an integrated whole, built at the one time.</p> <hr/> <p>Other relevant heritage listings</p> <table border="1" data-bbox="564 1541 928 1975"> <tbody> <tr> <td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td> <td>No</td> <td></td> </tr> <tr> <td>Australian Heritage Register</td> <td>No</td> <td></td> </tr> <tr> <td>NSW State Heritage Register</td> <td>No</td> <td></td> </tr> <tr> <td>National Trust of Aust (NSW) Register</td> <td>No</td> <td></td> </tr> <tr> <td>RAIA Register of 20th Century Buildings of Significance</td> <td>No</td> <td></td> </tr> <tr> <td>Other</td> <td>N/A</td> <td></td> </tr> </tbody> </table>	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	N/A	
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No																		
Australian Heritage Register	No																		
NSW State Heritage Register	No																		
National Trust of Aust (NSW) Register	No																		
RAIA Register of 20th Century Buildings of Significance	No																		
Other	N/A																		

Internal Referral Body	Comments
	<p data-bbox="571 456 890 488">Consideration of Application</p> <p data-bbox="571 495 1294 667">The proposal seeks consent for alterations and additions to an existing flat building to extend the ground level unit towards the south boundary. The proposal involves some internal alterations, an extension to the kitchen and living area and construction of a sliding gate with stairs to the unit entrance at the front boundary and no changes to strata areas or carparking are proposed.</p> <p data-bbox="571 701 1326 815">Given the minor nature of the proposed works and the physical separation between the heritage items and the subject property, the proposal is considered to not impact upon the significance of the heritage items.</p> <p data-bbox="571 848 1270 907">Therefore, no objections are raised to the proposal on heritage grounds and no conditions required.</p> <p data-bbox="571 940 1267 969"><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u></p> <p data-bbox="571 972 1222 999">Is a Conservation Management Plan (CMP) Required? No</p> <p data-bbox="571 1001 916 1028">Has a CMP been provided? No</p> <p data-bbox="571 1030 1072 1057">Is a Heritage Impact Statement required? No</p> <p data-bbox="571 1059 1165 1086">Has a Heritage Impact Statement been provided? No</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	No reply or comments has been received from <i>Ausgrid</i> within the statutory assessment period.

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 65 - Design Quality of Residential Apartment Development

The development is required to comply with SEPP 65, and the associated Apartment Design Guide (ADG) provides additional details and guidance for applying the nine design quality principles outlined in SEPP.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP are applicable to the assessment of this modification application.

As previously outlined within this report Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a Design Verification Statement from the building designer at lodgement of the development application. This documentation has been submitted for the modification.

Clause 28 of SEPP requires that in determining a development application for consent to carry out development to which SEPP 65 applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- a. The advice (if any) obtained from the design review panel, and
- b. The design quality of the development when evaluated in accordance with the design quality principles, and
- c. The ADG.

DESIGN & SUSTAINABILITY ADVISORY REVIEW PANEL

The development application relates to minor elements and internal components that do not warrant referral to the DSAP.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment

The site is located within the Manly Town Centre as defined by the Manly Local Environmental Plan 2013.

Contextually, the site is within the historic core of the established urban area of Manly. The site is surrounded by apartment buildings to the east, west and south along Eustace Street. Only a few single dwelling houses remain in the street or close to the site.

The alterations and additions are considered to be appropriate to this context as it makes only subtle

changes to a selected elements of the building internal areas that are mostly not visible to the public domain. The overall appearance of the building is substantially the same with building construction dating from the 1970-80's style in a yellow brick and concrete form. The street contains a range of older historic apartment buildings as well as some new contemporary shop top housing. The owners of the Strata Scheme are in progress of a separate development application for general Strata upgrade works.

Accordingly, it is considered that alterations and additions proposed satisfy this principle.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment

The alterations seek to improve the livability of Unit 1 and Unit 5 with minor changes to the terrace / private open space areas.

The proportions, transitions, materials and main aspects of the built form are maintained. The facades of the building retain a similar overall appearance as approved and do not adversely impact adjacent land or access to the building basement. The overall floor space is increased marginally from 88:1 which is the existing approved variation. This is proposed to change to 0.93:1 FSR and has been considered in detail under the provisions of Manly LEP, Manly DCP and clause 4.6 of the LEP.

Accordingly, it is considered that alterations and additions proposed satisfy this principle.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment

The existing residential building provides medium density urban housing and comprises eight (8) apartments on a site area of 697.4sqm, with around 618.2sqm gross floor area. The additional Unit 1 and Unit 5 apartment area added will take the total area to 651.9sqm. The density of the development is considered sustainable within the existing availability of infrastructure, public transport, community facilities, and environmental qualities of the site.

Accordingly, it is considered that the modified proposal satisfies this principle.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable

materials, and deep soil zones for groundwater recharge and vegetation.

Comment

The proposed works include demolition of all structures currently on the site and excavation works to accommodate the new development.

An updated BASIX certificate (see Certificate No.A433084 and A434527) for the residential component of the development has been submitted with the application. The certificate confirms that the development is capable of achieving the water and energy targets. Waste and bin management facilities remain consistent with the approved building design.

Accordingly, it is considered that the modified proposal satisfies this principle.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment

The modified proposal maintains the approved landscape scheme which responds to the streetscape through the provision of a landscaped podium edge facing Eustace Street and landscaping of the site at the rear of the existing building. The existing Unit 1 apartment has generous courtyards positioned to flow from primary living spaces and take advantage of available solar access along the side setbacks. Unit 1 terraces are currently all hard surfaces with some potted plants and a built-in planter to the western end of the northern courtyard. The existing Unit 5 apartment has a generous level 4 open rooftop terrace and takes advantage of orientation and limited outlook. Unit 5 upper terrace is currently all hard surfaces with some potted plants. Additional potted planting is proposed along with the extension area that enable plants to be exchanged or relocated to suit weather / climate or use of the terrace area.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment

The modified development provides a high level of amenity both internally and externally.

Given the challenge of the shape of the site / older style building format and its location, the application

does not adversely impact the approved room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space is appropriate for the age of the building and the occupancy.

Accordingly, it is considered that the modified proposal satisfies this principle.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment

The modified design satisfies the principles of CPTED and includes a positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose, with suitable weather protection.

Generally, the development provides secure access which is separated from vehicular access points.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment

The provision of a mix of apartment sizes in this location is considered reasonable due to the site's close proximity to Manly CBD and being within walking distance to the beach and public amenities and facilities in the local area. The building contains a mixture of apartments and the proposed work seek to modernise two of the apartments within the building.

Accordingly, it is considered that the modified proposal satisfies this principle.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment

All materials selected will be durable and hard wearing so the development does not prematurely age. This will enhance the long-term image of the building with its careful composition of building elements, textures, materials, colours, internal design, and structure contributing positively to the building character. Aesthetically the alterations and additions will assist to improve the building and the internal livability since the styling and appearance / design of the building substantially pre-dates the ADG and SEPP 65.

Accordingly, it is considered that the proposal satisfies this principle.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	<p>Consistent</p> <p>A Site Analysis Plan has been submitted with the application.</p> <p>The modification application also includes the following reports to inform the assessment of the application:</p> <ul style="list-style-type: none"> • SEPP 65 Design Statement; • Basix Certificate; and • Statement of Environmental Effects.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<p>Consistent</p> <p>The modification maintains its streetscape appearance as approved and optimises solar access within the development and to neighbouring properties for reasonable design outcomes.</p>
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	<p>Consistent</p> <p>The development is considered to provide a satisfactory transition between the private and public domains without compromising safety and security.</p>
Communal and Public Open Space	Appropriate communal open space is to be provided as follows:	<p>Consistent</p> <p>Given the site area of 697.4sqm,</p>

	<ol style="list-style-type: none"> Communal open space has a minimum area equal to 25% of the site Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid winter) 	<p>the development is required to provide 174sqm communal open space.</p> <p>The development was constructed well before the gazzetal of SEPP 65. Therefore the site has a limited area (60sqm) of communal open space which will remain unchanged at the rear. The application does not seek to alter the existing communal open space areas which is principally steep land within the rear setback to an adjacent reserve.</p> <p>The solar access to the communal open space at the rear of the site (west) remains unchanged.</p>															
<p>Deep Soil Zones</p>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1" data-bbox="405 1048 935 1509"> <thead> <tr> <th>Site area</th> <th>Minimum dimensions</th> <th>Deep soil zone (% of site area)</th> </tr> </thead> <tbody> <tr> <td>Less than 650m²</td> <td>-</td> <td>7%</td> </tr> <tr> <td>650m² – 1,500m²</td> <td>3m</td> <td></td> </tr> <tr> <td>Greater than 1,500m²</td> <td>6m</td> <td></td> </tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td> <td>6m</td> <td></td> </tr> </tbody> </table> <p>Achieving the design criteria may not be possible on some sites including where:</p> <ul style="list-style-type: none"> the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres); there is 100% site coverage or non-residential uses at ground floor level. <p>Where a proposal does not achieve deep soil requirements, acceptable stormwater</p>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m		Greater than 1,500m ²	6m		Greater than 1,500m ² with significant existing tree cover	6m		<p>Consistent</p> <p>Given the site area of 697.4sqm, the development is required to provide a 7% (49sqm) deep soil zone within a minimum dimension of 6.0m.</p> <p>The development achieves this at the rear of the site with dimensions of 10m to 3m width. This area is unaffected by the proposed additions.</p> <p>The development achieves acceptable stormwater management.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)															
Less than 650m ²	-	7%															
650m ² – 1,500m ²	3m																
Greater than 1,500m ²	6m																
Greater than 1,500m ² with significant existing tree cover	6m																

	management should be achieved and alternative forms of planting provided such as on structure.																									
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p><i>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</i></p> <p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i></p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>On Merit</p> <p>The habitable rooms and balconies in the development are arranged along the side and front of the building.</p> <p>Given that the habitable rooms facing private open space overall the approved configuration below is maintained.</p> <table border="1"> <thead> <tr> <th>Height</th> <th>Unit</th> <th>Rooms</th> <th>Balconies</th> </tr> </thead> <tbody> <tr> <td>12m Req'</td> <td>1</td> <td>0.9m to 3m</td> <td>Ground level terrace 0.0m</td> </tr> <tr> <td>6m</td> <td>5</td> <td>3m</td> <td>3m</td> </tr> </tbody> </table> <p>Note: Distances are to the side boundary.</p> <p>No change proposed to separation distances for the remainder of the building</p>	Height	Unit	Rooms	Balconies	12m Req'	1	0.9m to 3m	Ground level terrace 0.0m	6m	5	3m	3m
Building height	Habitable rooms and balconies	Non-habitable rooms																								
Up to 12m (4 storeys)	6m	3m																								
Up to 25m (5-8 storeys)	9m	4.5m																								
Over 25m (9+ storeys)	12m	6m																								
Height	Unit	Rooms	Balconies																							
12m Req'	1	0.9m to 3m	Ground level terrace 0.0m																							
6m	5	3m	3m																							
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Consistent</p> <p>The development provides access in context with the age of the building which is a legible building entry and defines the private property from the public domain. Minor change for access to Unit 1 is satisfactory.</p>																								
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Consistent</p> <p>No change</p>																								
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated 	<p>Consistent</p> <p>No change proposed.</p>																								

	<p>regional centre</p> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p><u>Bicycle parking</u></p> <p>The ADG does not include any numerical requirement for the provision of bicycle parking.</p>		
Part 4 Designing the Building				
Amenity				
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. 	<p>Consistent</p> <p>The development provides a compliant number of apartments which receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid winter. The additions will maintain solar access within the building.</p>		
	<ul style="list-style-type: none"> A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter. 	<p>Consistent</p> <p>No change to the approved regime.</p>		
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. 	<p>Consistent</p> <p>The development provides adequate number of apartments which are naturally cross ventilated. No change to the approved regime for the modification.</p>		
	<ul style="list-style-type: none"> Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line. 	<p>Consistent</p> <p>The overall depth of cross-through apartments do not exceed 18m. No change.</p>		
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1" data-bbox="405 1912 938 1975"> <tr> <td>Minimum ceiling height</td> </tr> <tr> <td> </td> </tr> </table>	Minimum ceiling height		<p>Inconsistent - Acceptable on merit</p> <p>The development retains the following floor-to-ceiling heights:</p>
Minimum ceiling height				

	<table border="1"> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>For 2 storey apartments</td> <td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> <tr> <td>Attic spaces</td> <td>1.8m at edge of room with a 30 degree minimum ceiling slope</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use areas</td> </tr> </table>	Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use areas	<ul style="list-style-type: none"> Habitable Rooms: 2.4m to 2.2m Non-Habitable Rooms: 2.4 to 2.2m <p>Ceiling heights are restricted by the existing floor and roof structures.</p>
Habitable rooms	2.7m											
Non-habitable	2.4m											
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area											
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope											
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use areas											
<p>Apartment Size and Layout</p>	<p>Apartments are required to have the following minimum internal areas:</p> <table border="1"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m²</td> </tr> <tr> <td>1 bedroom</td> <td>50m²</td> </tr> <tr> <td>2 bedroom</td> <td>70m²</td> </tr> <tr> <td>3 bedroom</td> <td>90m²</td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p> <p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Consistent</p> <p>The development retains the following apartment sizes:</p> <ul style="list-style-type: none"> Unit 1 - 1 Bedroom: 63m². Unit 4 - 3 Bedroom: 111sqm <p>(See architectural plans for comparison and minor change subject to construction phase and Strata allocation required)</p> <p>Consistent</p> <p>The alterations and additions include windows that maintain a total minimum glass area of not less than 10% of the floor area of the room. No change for the modification.</p> <p>Consistent</p> <p>Satisfactory. No change</p> <p>The development includes habitable room depths of between 7.6m and 6.6m with no change proposed as per the existing approved regime below:</p>
Apartment type	Minimum internal area											
Studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											

		(See architectural plans for comparison and minor change subject to construction phase and Strata allocation)																								
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	<p>Satisfactory. No change</p> <p>The non-compliant units are existing minor variations as approved previously:</p> <table border="1"> <thead> <tr> <th>Unit</th> <th>Room Area</th> </tr> </thead> <tbody> <tr> <td>402</td> <td>9m²</td> </tr> <tr> <td>502</td> <td>9.5m²</td> </tr> </tbody> </table> <p>Existing minor variations as approved previously..</p>	Unit	Room Area	402	9m ²	502	9.5m ²																		
Unit	Room Area																									
402	9m ²																									
502	9.5m ²																									
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Consistent No change to bedrooms.																								
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments 	Consistent Unit 1 and 5 maintain widths of greater than 4m. No change.																								
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Consistent Unit 1 and 5 maintain widths greater than 4.0m.																								
Private Open Space and Balconies	All apartments are required to have primary balconies as follows:	Satisfactory. No change The development provides the following private open space and balcony sizes:																								
	<table border="1"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<table border="1"> <thead> <tr> <th>Type</th> <th>Area</th> <th>Depth</th> </tr> </thead> <tbody> <tr> <td>1 Bedroom</td> <td>8m² to 19m²</td> <td>2m</td> </tr> <tr> <td>3 Bedroom</td> <td>18m² to 67m²</td> <td>2m to 2.4m</td> </tr> </tbody> </table>	Type	Area	Depth	1 Bedroom	8m ² to 19m ²	2m	3 Bedroom	18m ² to 67m ²	2m to 2.4m
	Dwelling Type	Minimum Area	Minimum Depth																							
Studio apartments	4m ²	-																								
1 bedroom apartments	8m ²	2m																								
2 bedroom apartments	10m ²	2m																								
3+ bedroom apartments	12m ²	2.4m																								
Type	Area	Depth																								
1 Bedroom	8m ² to 19m ²	2m																								
3 Bedroom	18m ² to 67m ²	2m to 2.4m																								
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Satisfactory. No change The building contain 8 apartments. Unit 1 will still have a total of 58.7sqm of outdoor terrace space including 15.5sqm of principal private open																									

		space with minimum dimensions of 3m in any direction. Unit 5 will still have 32sqm of outdoor terrace space with minimum dimensions in excess of 3m.										
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>Where Design Criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level.</p> <p>Achieving the design criteria for the number of apartments off a circulation core may not be possible. Where a development is unable to achieve the design criteria, a high level of amenity for common lobbies, corridors and apartments should be demonstrated, including:</p> <ul style="list-style-type: none"> • sunlight and natural cross ventilation in apartments. • access to ample daylight and natural ventilation in common circulation spaces. • common areas for seating and gathering. • generous corridors with greater than minimum ceiling heights. • other innovative design solutions that provide high levels of amenity. 	Satisfactory. No significant change										
	<p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	Not applicable										
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table border="1" data-bbox="405 1458 938 1742"> <thead> <tr> <th>Dwelling Type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> </tr> <tr> <td>1 bedroom apartments</td> <td>6m²</td> </tr> <tr> <td>2 bedroom apartments</td> <td>8m²</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>10m²</td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	<p>On merit</p> <p>No change proposed. No additional bedrooms.</p>
Dwelling Type	Storage size volume											
Studio apartments	4m ²											
1 bedroom apartments	6m ²											
2 bedroom apartments	8m ²											
3+ bedroom apartments	10m ²											
Acoustic Privacy	<p>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at</p>	<p>Consistent</p> <p>All garage doors, driveways, service areas, plant rooms,</p>										

	least 3m away from bedrooms.	building services, mechanical equipment, private open spaces and circulation areas are suitable for the building. Generally the status of existing acoustic privacy remains consistent.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent The development is designed to minimise acoustic impact from neighbouring development and the local road network as well as minimising noise transmission to neighbouring land uses.
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent. No change to the current apartment mix.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Not applicable
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent The proposed building maintains its progressive setbacks and good levels of vertical and horizontal articulation such that the resulting building alignments and proportions that are generally balanced and reflective of the internal layout and structure. Colours are selected to match the existing brickwork.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Consistent The development retains a flat roof form which is considered to be consistent with development in the local area and proximity to Manly Town Centre. The roof top areas were constructed for private use terraces in a split level arrangement across the floor plate of the building.
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Consistent The deep soil landscape areas are unchanged.
Planting on	When planting on structures the following are	Consistent

<p>Structures</p>	<p>recommended as minimum standards for a range of plant sizes:</p> <table border="1" data-bbox="391 477 948 1283"> <thead> <tr> <th>Plant type</th> <th>Definition</th> <th>Soil Volume</th> <th>Soil Depth</th> <th>Soil Area</th> </tr> </thead> <tbody> <tr> <td>Large Trees</td> <td>12-18m high, up to 16m crown spread at maturity</td> <td>150m³</td> <td>1,200mm</td> <td>10m x 10m or equivalent</td> </tr> <tr> <td>Medium Trees</td> <td>8-12m high, up to 8m crown spread at maturity</td> <td>35m³</td> <td>1,000mm</td> <td>6m x 6m or equivalent</td> </tr> <tr> <td>Small trees</td> <td>6-8m high, up to 4m crown spread at maturity</td> <td>9m³</td> <td>800mm</td> <td>3.5m x 3.5m or equivalent</td> </tr> <tr> <td>Shrubs</td> <td></td> <td></td> <td>500-600mm</td> <td></td> </tr> <tr> <td>Ground Cover</td> <td></td> <td></td> <td>300-450mm</td> <td></td> </tr> <tr> <td>Turf</td> <td></td> <td></td> <td>200mm</td> <td></td> </tr> </tbody> </table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		<p>The development retains the main areas of existing planters area will some minor change at the front for pathway connection across the front of Unit 1.</p>
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																																	
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent																																	
Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent																																	
Shrubs			500-600mm																																		
Ground Cover			300-450mm																																		
Turf			200mm																																		
<p>Universal Design</p>	<p>Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features.</p> <p>The seven core design elements in the <i>LHA Silver Level</i> are:</p> <ol style="list-style-type: none"> 1. A safe continuous and step free path of travel from the street entrance and / or parking area to a dwelling entrance that is level. 2. At least one, level (step-free) entrance into the dwelling. 3. Internal doors and corridors that facilitate comfortable and unimpeded movement between spaces. 4. A toilet on the ground (or entry) level that provides easy access. 5. A bathroom that contains a hobless shower recess. 6. Reinforced walls around the toilet, shower and bath to support the safe installation of 	<p>Consistent</p> <p>No change. The proposal includes minor additions only to Unit 1 and Unit 5.</p>																																			

	<p>grabrails at a later date.</p> <p>7. Stairways are designed to reduce the likelihood of injury and also enable future adaptation.</p>	
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Not applicable
Mixed Use	<p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>	<p>Consistent</p> <p>The development has accessibility to regular public transport routes at Manly wharf transport hub.</p>
Awnings and Signage	<p>Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.</p> <p>Signage must respond to the existing streetscape character and context.</p>	Not applicable
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	<p>Consistent</p> <p>The BASIX Certificate submitted with the application will achieve a target pass for both Units.</p>
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<p>Consistent</p> <p>The alterations and additions maintain consistency with the water disposal measures and the impact of the development on any stormwater disposal.</p>
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	<p>Consistent</p> <p>The change to the building maintain consistency with Waste Management and do not change the existing collection and storage of waste and recycling.</p>
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	<p>Consistent</p> <p>The modification does not alter the overall approved scheme for schedule of materials and finishes which ensures the longevity and sustainability of the building.</p>

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

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

Comment

The development satisfies the requirements of Clause 30(1)(a), (b) and (c).

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) sub-clause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of sub-clause (2), and
- (b) the design criteria specified in sub-clause (1) are standards to which clause 79C (2) of the Act applies.

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

Comment

It is considered that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A433084 dated 1.10.2021 and A434527 dated 13.10.2021).

The BASIX Certificates indicate that the development will achieve the following for both certificates associated with Unit 1 and unit 5:

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

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* as the works relate to alterations and additions to a residential flat building. No increase in dwelling density is proposed and objections are raised to the proposal from *Ausgrid*.

Other Infrastructure Service Authorities

Referral to the Transport for NSW (TfNSW) is not required for the proposal and no further referral issues are required pursuant to the SEPP. Sydney Water assets (sewer, water etc) are managed separately through Sydney Water's own administrative procedures.

Manly Local Environmental Plan 2013

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

Principal Development Standards

--	--	--	--	--

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11.0m	8.5m New roof element 9.1m Existing upper roof elements	N/A	Yes
Floor Space Ratio (Site area 697.4)	FSR:0.75:1 (523 sqm)	FSR: 0.93:1 (651.9sqm)	24.6% (increased from 18.2% variation - 618.2sqm))	No*

See merit consideration under the heading "Clause 4.6" within this report.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.75:1 (523.1sqm)
Proposed:	0.93:1 (651.9sqm)
Percentage variation to requirement:	24.6%

Note: The new floor space to be added is 14.4sqm for Unit 1 (ground level - west side) and 19.3sqm for Unit 5 (either side of the rooftop stair access structure).

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio 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 4.4 - Floor space ratio 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 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 existing FSR of the existing building being over the current zoned FSR. The proposal for additional FSR has negligible impact on neighbours, streetscape of the locality.*
- *The proposed Unit 1 & 5 additions will not take away any views of the foreshore, ocean or harbour from any neighbours.*
- *The proposed Unit 1 & 5 additions comply with front, rear and wall height and building height controls.*
- *The additional FSR for Unit 1, 9 Eustace Street would allow better use of the very large terrace*

area in all weather conditions, while providing greater privacy for the owners and neighbouring properties. The area of terrace proposed to be in-filled is in shadow for a majority of the year due to the bulk and scale of 9 Eustace Street and neighbouring properties. The additional FSR for Unit 5 would allow better use of the exposed roof deck in all weather conditions, while providing greater privacy for the owners and neighbouring properties (in particular Unit 8 and 11 Eustace Street).

- *Unit 1 will still have a total of 58.7m² of outdoor terrace space including 15.5m² of principal private open space with minimum dimensions of 3m in any direction. Unit 5 will still have 32m² of outdoor terrace space with minimum dimensions in excess of 3m.*
- *In light of the scale of surrounding buildings and the limited impact of the design on the surrounding buildings, the development standard is unreasonable, unnecessary in this case.*
- *The development does not impact any important Landscape and townscape features.*
- *Other similar developments on Eustace Street have similar FSR densities of 0.94/1 or above."*

Comment:

Overall the total FSR does not result in setbacks that are inconsistent with that of surrounding land and does not result in any breach to the height control. The generally amenity of the streetscape will not be impacted by the non-compliant FSR in that the surrounding pattern of development contains many higher and larger scale buildings. The changes to the building provide improved livability to the subject Units and do not affect the whole of the building in terms of extensive structural changes. The additions have been designed to integrate with the existing built form including colours and distribution of building bulk. The changes do not raise significant amenity concerns with regard to the ADG and Manly DCP.

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 floor space ratio development standard and the objectives of the E3 Environmental Management zone (now known as C3). An assessment against

these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

Elements of landscaping are to be retained along the front boundary wall and additional landscaping within the site will be provided as per the original building layout. The proposed façade changes are integrated in a sympathetic manner to the building style and setback from the streetscape. The bulk and scale of proposed design is in keeping with the neighbouring properties.

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

Comment:

The proposed FSR does not diminish any harbour views or reduce overall landscaping on the site. The proposed additions do not dominate the subject site in that a similar appearance of the height, setback and bulk is maintained and will allow for landscaping elements to be retained. The site does not have public views through the site to the water from street level. The development results in a minor increase in the total gross floor area of 33.7sqm (added) which makes better use of under-utilised private open space / terrace areas.

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

Comment:

The new addition to Unit 1 is not readily visible from the street level. The new addition to unit 5 on the top floor is set-back to limit the impact of its visibility to the streetscape. The building work is consistent with the pattern and character of the existing yellow-brick flat building that is of a style dating from the 1970-80 period.

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

Comment:

The FSR variation will not be responsible for any unreasonable loss of privacy, loss of water views or amenity since the building works involves ancillary changes to only 2 Units and elements of carparking, private open space and landscaping elements remain consistent with the overall Stata Scheme. Details of solar access and natural light consideration have been made in direct consideration under the Manly DCP in terms of private land and the public domain and are satisfactory.

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

Comment:

This objective is not applicable to the apartment building as the land is not in a business zone.

Zone objectives

The underlying objectives of the zone are:

The underlying objectives of the R1 General Residential zone

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

Comment:

The change to FSR is consistent with this clause and improves the livability of two Units within the complex by internal design changes and rational use of under utilised private terrace areas. Modernisation of the subject Units is therefore consistent with this objective and only impacts part of the private terrace areas without any unreasonable impacts on adjacent land.

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

Comment:

The variation to the control does not affect this objective as the use of the site for 8 residential apartments remains.

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

Comment:

The building is not a mixed use development and no other uses are proposed as part of this application.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the zone and the objectives of the development standard.

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 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to

the Floor space ratio Development Standard.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 697.4 sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 150 sqm	8 on site (No change)	72% (Existing)	No (As approved)
	Dwelling Size: 1 bedroom dwelling: 50sqm 2 bedroom dwelling: 70sqm 3 bedroom dwelling: 90sqm	Unit 1 - 68 sqm Unit 5 - 145 sqm	N/A	Yes
4.1.2.1 Wall Height	North side: 10m (based on gradient 1 in 5)	8.8m North wall	N/A	Yes
	South side: 9.5m (based on gradient 1 in 8)	9.0m South wall	N/A	Yes
4.1.2.2 Number of Storeys	3 + basement (Area L)	3 + basement	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.2m	N/A	Yes
	Parapet Height: 0.6m	0.45m	N/A	Yes
	Pitch: maximum 35 degrees	2 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Consistent with prevailing setback. at 6.0m Unit 1. Upper level additions 10.5m setback.	N/A	Yes (As approved)
4.1.4.2 Side Setbacks and Secondary Street Frontages	3m (based on wall height)	3m	N/A	Yes
	Windows: 3m	0.9m Unit 1 3.0m Unit 5	N/A	No* Yes
4.1.4.4 Rear Setbacks	8m	3.7 to 6.8m	53%	No

		(Existing)	(No change)	(As approved)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area 348sqm	53% 371sqm	N/A	Yes
	Open space above ground 30% of total open space	32% 119sqm	N/A	No*
4.1.5.2 Landscaped Area	Landscaped area 30% of open space	20% 69sqm	N/A	No*
	3 native trees	0 trees (existing established)	N/A (No change)	No (As approved)
4.1.5.3 Private Open Space	12sqm per dwelling	Unit 1: 15.5 sqm Unit 5: 55.0 sqm	N/A N/A	Yes 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	4.2m	N/A	Yes
Schedule 3 Parking and Access	1 per Unit 0.2 per 2-bed Unit 0.5 per 3-bed Unit 0.25 per Unit Visitor parking	No change 12 space + 2 visitor spaces	N/A (No change)	Yes (As approved)

* See detailed merit assessment within this report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and 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)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Relevant requirements and objectives, pursuant to *Clause 3.4.1 Sunlight Access and Overshadowing* (including sub sections), are considered as follows:

Merit Assessment Comments:

- Shadow diagrams have been provided for the 21 June to demonstrate the change to overshadowing from the roof level additions associated with Unit 5. The new built area and remaining terrace of Unit 1 will receive sunlight in the mornings and (sometimes) the mid-afternoon as per the existing situation. The proposed additions to Unit 5 (Level 4) will have no unreasonable impact to the private open space of neighbouring properties (7 or 11 Eustace Street) or other apartments within the 9 Eustace Street complex itself. The proposed addition to Unit 1 (ground floor) will have no shadowing impact to the neighbouring properties or other apartments for adjoining apartments within the complex or neighbouring land.
- The new built area and terrace of Unit 5 will receive adequate sunlight through the day with skylights and high-level northerly windows providing solar access and natural light. The overshadowing of solar panels on No.7 Eustace Street is marginal and is limited to a minor

proportion of the solar panels with shadow transition only commencing after 12 midday along the edge of one panel section. Pursuant to Section 3.4.1.3 *Overshadowing Solar Collector Systems* a minimum of 6 hours solar access be retained to solar collectors on neighbouring properties. This has been achieved across the majority of the solar panel area in that the shadow transition during the day does not last longer than 1 hour in a single panel section (unit PV cell), and the shadow affects only one edge of the closest cell bank.



Image: Southern side of terrace at location of additions to roof area. Note solar panel on adjacent roof.

- No change to the existing apartments within the subject building will occur in association with the proposed changes. The new enclosed areas will receive the minimum 2 hours direct sunlight between 9am and 3pm at mid-winter. Change to solar access toward side windows along 11 Eustace Street is minor and does not create unreasonable loss of light due to the narrow width of the rumpus additions.



Image: Area to be enclosed for roof additions (rumpus and bathroom) for Unit 5 terrace on either side of stair access.

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

3.4.2 Privacy and Security

Relevant requirements and objectives, pursuant to *Clause 3.4.2 Privacy and Security*, are considered as follows for the modification:

Merit Assessment Comments:

- The proposal has been designed to ensure no unreasonable loss of privacy to adjacent and nearby development by the use of design responses including window size and placement of windows to give appropriate privacy.
- The building separation, fencing, and landscaping assist to mitigate impacts on privacy appropriate to residential living in the surrounding residential environment. At the upper level however currently the whole open terrace has direct line of sight into various rooms of No.11 Eustace Street and vice versa. This will be significantly improved by the new built area, while still maintaining an outdoor terrace of 32sqm. The proposed Unit 5 design will minimise noise transmission between apartments and neighbouring properties (particularly No.11 Eustace Street). The proposed new rumpus has appropriate side walls and high side window sills to maintain privacy to Unit 5 and along the side setback.
- The alterations and additions have been designed with appropriate response to ensure no unreasonable impacts on privacy (both acoustical and visual). Improved privacy for the unit 1 owners will be achieved in that currently the south east terrace can be viewed from various units at No.9 Eustace Street. This will be improved by the new enclosed room area, while still maintaining an outdoor terrace of 28.7. sqm. Windows at ground floor are suitably screened by fencing and therefore a 0.9m setback is acceptable.
- Overall the proposal provides an appropriate level of privacy in the context of the surrounding density of the residential living environment without unreasonably compromising access to light and air. Bedroom areas, being normally occupied less during the day and used for sleeping at night will not be unreasonably impacted. The flat building remains consistent with the approved context within the surrounding environment and relationship to adjacent buildings.

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

3.4.3 Maintenance of Views

Relevant view considerations and objectives pursuant to *Clause 3.4.3 Maintenance of Views*, are addressed as follows:

Merit Assessment Comments:

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

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

Comment:

The views affected include a broad outlook over the roof areas toward Manly Esplanade (westerly direction) from No.11 Eustace Street across No.9 Eustace Street. A view of water or coastline interface and the harbour area is not readily discernable across the line of the roof additions. A site inspection has been conducted to inspect the views from No.11 Eustace Street from appropriate Units to observe the extent of available views. The view from the rear Unit No.8 has also been considered and is an outlook only over the roof area toward the CBD with no adverse amenity impact.

It is possible to see down the alignment of Eustace Street to the harbour from the front side windows within No.11 Eustace Street however this view is narrow corridor and is not impacted by the proposal.

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

Comment:

The associated view is an urban outlook from No.11 Eustace Street for window along the central and rear area.

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

Comment:

While there is a view along the street alignment of Eustace Street at the front of the site and from adjacent sites the alterations and additions associated with Unit 5 do not affect water views. The impact is regarded as an urban outlook across a side boundary and roof areas and toward the side elevation of No.54 to 58 West Esplanade and the Norfolk Pine Trees along West Esplanade of Manly Harbour.

At the upper level where the additions to Unit 5 are proposed the angle of the street alignment, density of adjacent development between the harbour area result in a negligible view impact.

On balance, considering the whole of the outlook available, alternative view lines, pattern of surrounding development, district outlook and the existing roof profile in comparison to the proposed new roof, the

view loss is qualitatively considered to be negligible with respect to the low profile rooftop area and works generally.

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

Comment:

An assessment of the proposal with the planning controls has been made and in summary the alterations and additions do not change the maximum height of the building, envelope or setbacks and the change to FSR, building bulk or wall height. In consideration of the modification elements the applicant has sought to achieve minimal to nil view impacts by maintaining a low roof profile. Therefore the modification works are assessed as having no unreasonable view impacts.



Image: Outlook across the roof terrace area toward Manly Esplanade.

In summary, the overall view impact when considered in terms of the proposed building design modification and ancillary elements is considered satisfactory and does not create an unreasonable view impact for any adjacent or surrounding properties.

The development is further considered against the Objectives of the DCP control as follows:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

Comment:

The proposal maintains view sharing with a reasonable design response that minimises impacts that are consistent with view sharing principles outlined above. The existing flat building and additions that will change the building roof profile does not create an unreasonable loss of view outlook with regard to the quantitative and qualitative overall outlook.

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

footpaths).

Comment:

The proposed building height, envelope and alignment of the building is unchanged. The changes to the roof top area will not have an unreasonable impact on views from adjacent properties along Eustace Street. The alterations and additions to the flat building will have no unreasonable impact on public views along the street.

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

Comment:

The proposal is consistent with the objectives of the Manly DCP to ensure development may take place where a local outlook or water views are concerned and the design responds appropriately to the site constraints and opportunities without creating unreasonable view amenity impacts for surrounding development that overlook the site. On balance in considering the whole of views available from various positions and relevant properties and view lines in particular over / through the site, the proposal is considered to be consistent with this objective.

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

4.1.3 Floor Space Ratio (FSR)

On existing sites in Residential LEP Zones with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a).

The undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3).

For the purposes of this clause the proposal complies with the MDCP requirement using the Area "C" (250sqm) which applies to any undersized lots in the subzone that may be less than 250sqm. In this case the site is 697.4sqm and therefore only the LEP requirement applies and the DCP exception to FSR is not applicable.

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

Relevant requirements and objectives pursuant to *Clause 4.1.4 Setbacks*, are considered as follows:

Merit Assessment Comments:

- The additions to the building propose new windows (W1 and W2) that will be within 3.0m of the side boundary at ground level for Unit 1. At the upper level for Unit 5 all windows are 3.0m or more from the side boundary. In this regard, consideration of the non-compliance for Unit 1

demonstrates no unreasonable impact on adjacent land due to the solid adjacent building wall for No.7 Eustace Street.



Image: Area of additions across part of the ground level side terrace (Unit 1) and the adjacent neighbouring solid wall.

- The alteration and additions are consistent with the spatial proportion of the overall massing of the building and the front and rear setback will be retained.
- The building alterations do not create unreasonable amenity impacts by way of the setback elements of the upper storey for Unit 5 or changes to Unit 1 at the lower residential levels. Reasonable access to sunlight, ventilation, outlook and noise amenity will be maintained that are appropriate for the density of the surrounding residential environment.
- The changes to wall setback for Unit 1 allow for flexible and improved internal amenity, including livability of Unit 1 (as a small 1 bedroom unit) and usable internal space for Unit 5 (as a larger 3 bedroom unit). The change to the building do not disrupt the pattern and scale of the streetscape character.
- Considerations about building fire separation have been addressed by the applicant to the satisfaction of Council's Building Inspector for the purposes of fire engineering solutions. The site is not affected by natural bushfire hazard.

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

4.1.5 Open Space and Landscaping

Relevant requirements and objectives, pursuant to *Clause 3.1.5 Open Space and Landscaping*, are considered as follows:

Merit Assessment Comments:

- No change is proposed to landscaping in that the proposal utilises hard paved open space of terraces and roof top areas with no change to existing vegetation. The alterations and additions do not change any existing deep soil landscape zones on the site and the enclosure of parts of the existing private open space for Unit 1 and Unit 5 do not detract from the existing building style and streetscape. No detailed landscape referral assessment is required as the proposal does not seek to change any soft landscape elements or propose additional canopy trees. While there is a minor non-compliance with the proportion of above ground open space to total open space the alterations and additions seek to make better use of existing marginal outdoor open space areas for improved internal living areas.
- Landscape areas will remain consistent with the existing building layout, including common property areas of deep soils zones that remain unchanged. The site is not appropriate for very large trees which would impact surrounding coastal outlook, light or potentially building elements over the long term. This is consistent with the pattern of surrounding development along Eustace Street.
- The site backs onto a local reserve and no change is proposed to the landscape areas at the rear of the site. The site is not within a bushfire zone that would limit certain tree species where there are alterations and additions proposed.
- Landscape elements at the rear and front of the building will remain unchanged to complement the architecture of the building and provide amenity when viewed from public and private land. The proposed alterations only affect hard paved terrace areas and seek to make better design use of the marginal open space areas (side setback and roof terrace) to improve internal amenity and convenience of the principal living areas for Unit 1 and Unit 5.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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

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

A monetary contribution of \$3,699 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$369,876.

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

That Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 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.

In summary, a detailed assessment has been required for the following specific issues:

Consideration of a variation to the FSR in context of the alterations and additions that involve partial enclosure of a roof top terrace (Unit 5) and renovation work to Unit 2. Overall the existing FSR is being increased from 0.88:1, being currently above the maximum (.75:1) FSR, up to 0.94:1 principally associated with augmenting existing terrace areas of private open space to improve internally livability of Unit 1 and Unit 5 only.

Building setbacks, height, FSR, solar and privacy amenity issues raised in submissions have been considered and the design of the proposal is not considered to create unreasonable impacts on adjacent land. The property currently contains 8 Units in a split level layout for the building with the overall height being unchanged and the proposed works enabling some building improvements to Unit 1 and Unit 5. The residential density of the surrounding streetscape, building separation, privacy (visual and acoustic), solar access, views and general amenity will not be unreasonably affected by the proposed works. Other construction related issues (fire engineering, strata plan changes) are addressed by conditions.

In conclusion, the principal issues in the assessment have been addressed and the proposal is considered to maintain consistency with the objectives and requirement of the Manly LEP and DCP for

the alterations and additions to the residential flat building.

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

RECOMMENDATION

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio 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.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/2409 for Alterations and additions to a residential flat building on land at Lot 1 SP 31425, 1 / 9 Eustace Street, MANLY, Lot 5 SP 31425, 5 / 9 Eustace Street, MANLY, Lot CP SP 31425, 9 Eustace Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 002 / A Site Plan	2.12.2021	Cradle Design
DA101 / B Unit 1 Existing and Demolition Plans and Elevations	2.12.2021	Cradle Design
DA102 / B Unit 1 Floor, Roof and Stormwater Plans	2.12.2021	Cradle Design
DA103 / B Unit 1 Proposed Elevations	2.12.2021	Cradle Design
DA 104 / B Unit 1 Section A	2.12.2021	Cradle Design
DA 111 B Finishes Schedule	2.12.2021	Cradle Design
DA 501 / B Unit 5 Existing and Demolition Plans	2.12.2021	Cradle Design
DA 502 / B Unit 5 Existing and Demolition Elevations	2.12.2021	Cradle Design
DA 503 / B Unit 5 Floor, roof and Stormwater Plans	2.12.2021	Cradle Design
DA 504 B Unit 5 East Elevations	2.12.2021	Cradle Design

DA 505 B Unit 5 North and South Key Elevations	2.12.2021	Cradle Design
DA 506 B Unit 5 North and South Elevations	2.12.2021	Cradle Design
DA 504 B Unit 5 Sections A and B	2.12.2021	Cradle Design
DA 514 B Unit 5 Finishes Schedule	2.12.2021	Cradle Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Basix Certificate A434527	13.10.2021	Cradle Design
Basix Certificate A433084	1.10.2021	Cradle Design

- b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste management plan - 9 Eustace Street	2.12.2021	Cradle Design

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 \$3,698.76 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 \$369,876.00.

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

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 \$1,500 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).

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

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

6. **Amendments to the approved plans**

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

- The side highlight window W41 for the rumpus is to have fixed translucent window glazing.

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

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

7. **Fire Resisting Construction**

The proposed building works associated with the dining room/kitchen extension is required to

comply with Specification C1.1 Fire-resisting construction clause 2.1 of the Building Code of Australia. Details demonstrating compliance from an appropriately qualified Registered Certifier* are to be provided prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

8. **Structural Adequacy**

A Certificate of structural adequacy signed by a practicing structural engineer, stating that the wall is capable of supporting the proposed additions and has an FRL of 30/-/-is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the existing building is capable of supporting all additional loadings.

9. **Compliance with Standards**

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. **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.

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

Prior to any works commencing on site, where applicable, including demolition / mixing loose / granular materials, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

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

12. **Strata Plan**

The Strata Plan for the subject property Title is to be revised / updated by a qualified and

practicing Surveyor to reflect the approved building layout changes. Evidence of the updated Strata Plan having been lodged for registration with the NSW Land Titles Office is to be submitted to Council.

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

Reason: Land Title records

Registered Design Record				
Project Address	Units 1, 5 & 9 Eustace Street, Manly, NSW 2095	Project Title	Development & Construction of Residential Units	
Project No.	549-9	Block Code/Case Reg No.		
Consent No.	549	Planning No.	549/2021	
Design Title	3D Views	Design No.		
Rev	Date	Description	DRP Full Name	Reg No
1	20/04/2022	Final Design	Paul Lucas	22012001



01 VIEW 1 FROM EUSTACE STREET
- NTS 3D VIEW



02 VIEW 2 FROM EUSTACE STREET
- NTS 3D VIEW

LEGEND	
	Existing Walls
	Element to be demolished
	New Works - UNIT 1
	New Works - UNIT 1 (section)
	New Works - UNIT 5
	New Works - UNIT 5 (section)



03 VIEW 3 STREETScape
- NTS 3D VIEW

This drawing and design is subject to copyright and may not be reproduced without prior written consent. All dimensions to be verified and any discrepancies referred to Cradle Design prior to the commencement of any work. Use figured dimensions only.

STUDIO
Shop 11 316 Sydney Road
Balgownie NSW 2093
t: 02 9023 5332
e: info@cradledesign.com.au
w: www.cradledesign.com

cradle **ORIENTATION**

Non-Architects:
Paul Lucas - 8766
Regan VanderWort-Walsh - 7904

REVISION
REV A - 02.12.2021 - DA

CLIENT
UNIT 1 - D MORRIS
UNIT 5 - G WOO & G McINNES
ADDRESS
UNITS 1 & 5, 9 EUSTACE STREET
MANLY NSW 2095

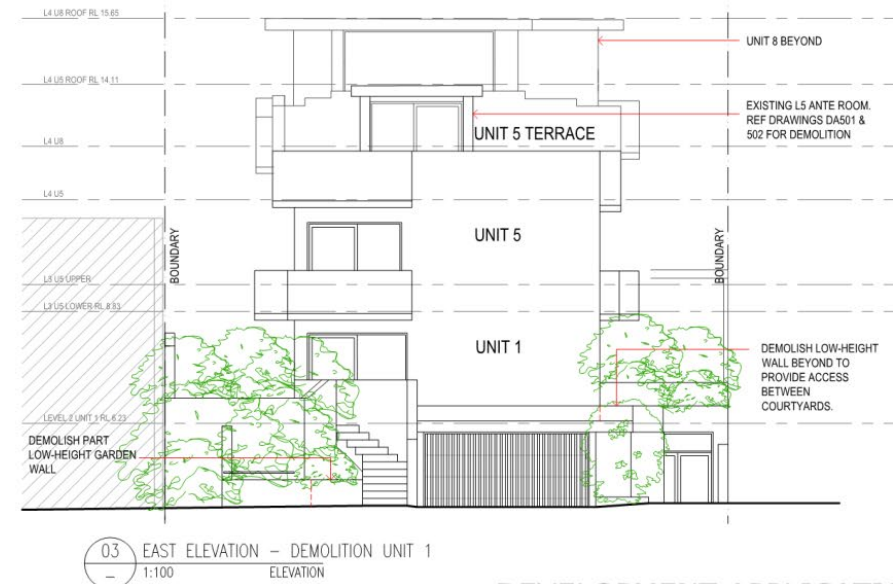
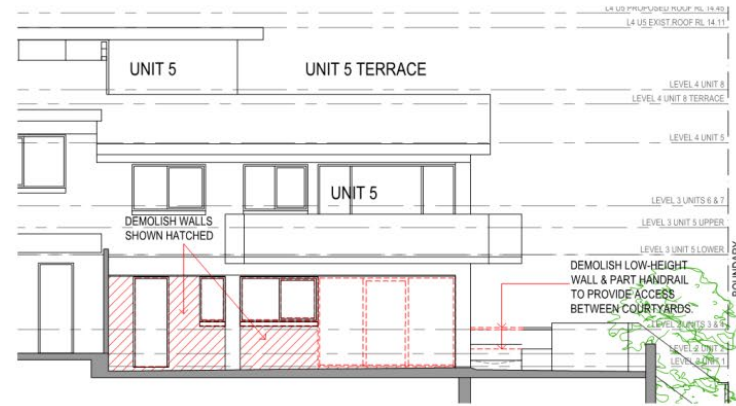
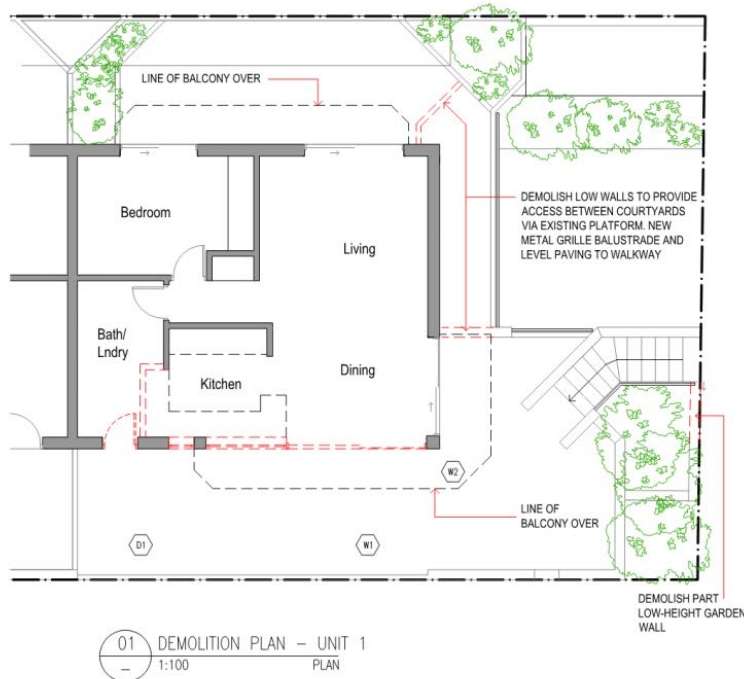
DEVELOPMENT APPLICATION

PROJECT	DRAWING TITLE
	3D VIEWS
REFERENCE	S49-9 EUSTACE ST - U1 & U5
SCALE	1:100@A3
DRAWN	DJ
DA 004 A	
	DRAWING ISSUE

Registered Design Record			
Project Address	Units 1, 5, 9 Eustace Street, Manly, NSW 2095	Project Title	Demolition & Construction of Replacement Unit 1
Project No.	101	Consent No.	101
Design Title	Units 1, 5, 9 Eustace Street, Manly, NSW 2095	Design No.	101
Rev	Date	Description	Rev. No.
1	10/11/2021	Issue for RFP	1
2	10/11/2021	Issue for RFP	2

LEGEND

- Existing Walls
- Element to be demolished
- New Works - UNIT 1
- New Works - UNIT 1 (section)
- New Works - UNIT 5
- New Works - UNIT 5 (section)



This drawing and design is subject to copyright and may not be reproduced without prior written consent. All dimensions to be verified and any discrepancies referred to Cradle Design prior to the commencement of any work. Use figured dimensions only.

STUDIO
Shop 11 316 Sydney Road
Balgownie NSW 2093
t: 02 9029 5532
e: info@cradle-design.com.au
w: www.cradle-design.com

cradle

ORIENTATION

REVISION
REV B - 02.12.2021 - DA

CLIENT
UNIT 1 - D MORRIS
UNIT 5 - G WOO & G McINNES
ADDRESS
UNITS 1 & 5, 9 EUSTACE STREET
MANLY NSW 2095

DEVELOPMENT APPLICATION

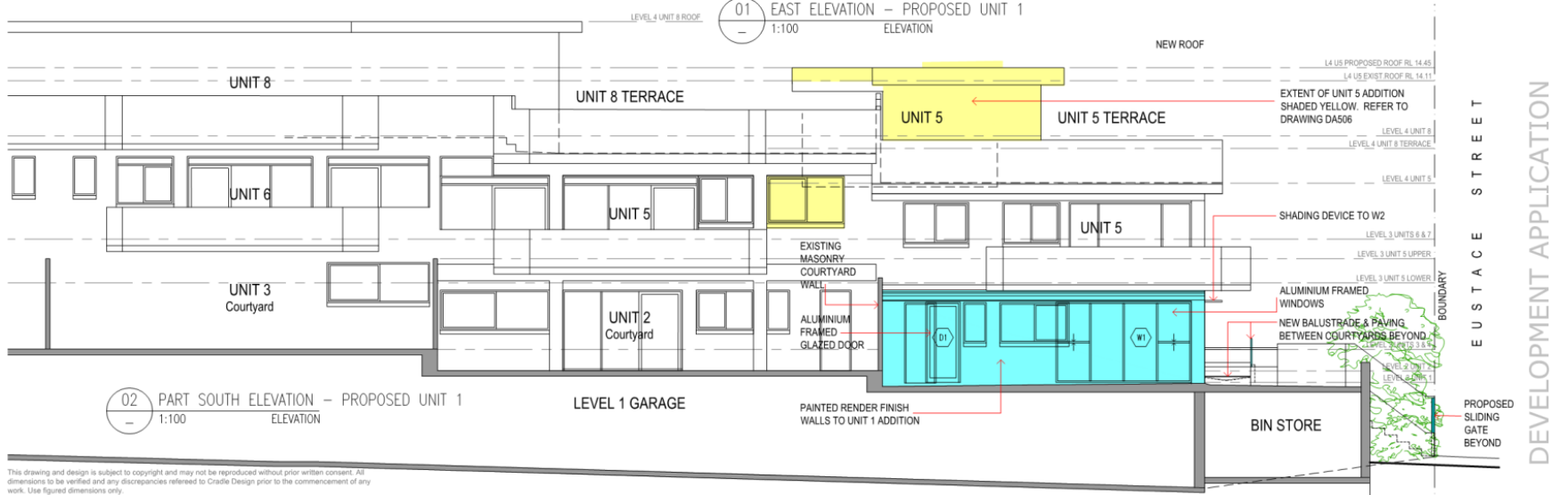
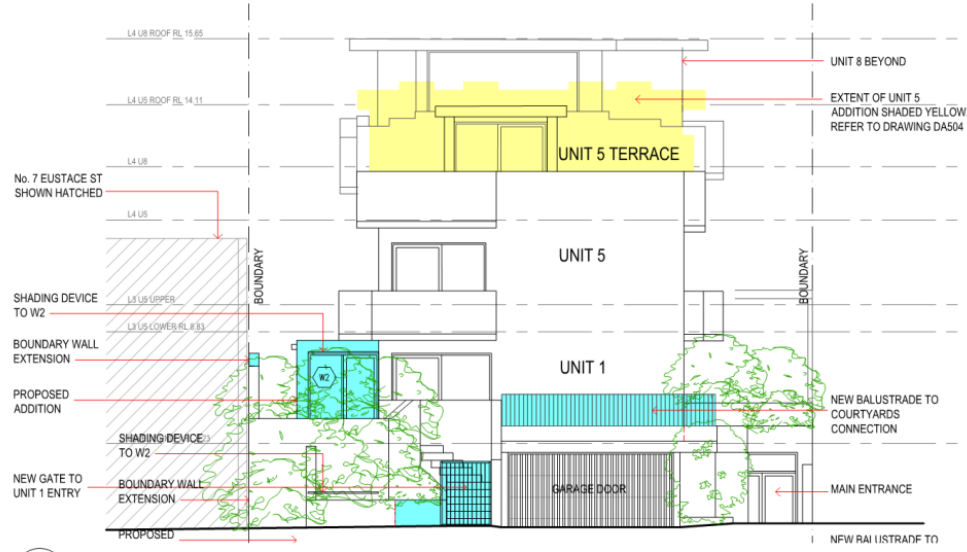
PROJECT
DRAWING TITLE
UNIT 1 EXISTING & DEMOLITION PLAN & ELEVATIONS
REFERENCE
S49-9 EUSTACE ST - U1 & U5
SCALE
1:100@A3

DA | 101 B
DRAWN
DJ
ISSUE

Registered Design Record			
Project Address	Units 1, 3, 5, 6, 8 Eustace Street, Manly, NSW 2095	Project Title	Development & Alterations to Residential Pool Building
Project File	549-9 Eustace St - Residential Pool Building	Consent No.	549
Design Title	UNIT PROPOSED ELEVATIONS	Design No.	DA103B
Rev/Date	Description	DRP Full Name	Rev No
1/1/2022	PROPOSED ELEVATIONS	PAUL LUCAS	01
2/1/2022	REVISIONS	PAUL LUCAS	02

LEGEND

- Existing Walls
- Element to be demolished
- New Works - UNIT 1
- New Works - UNIT 1 (section)
- New Works - UNIT 5
- New Works - UNIT 5 (section)

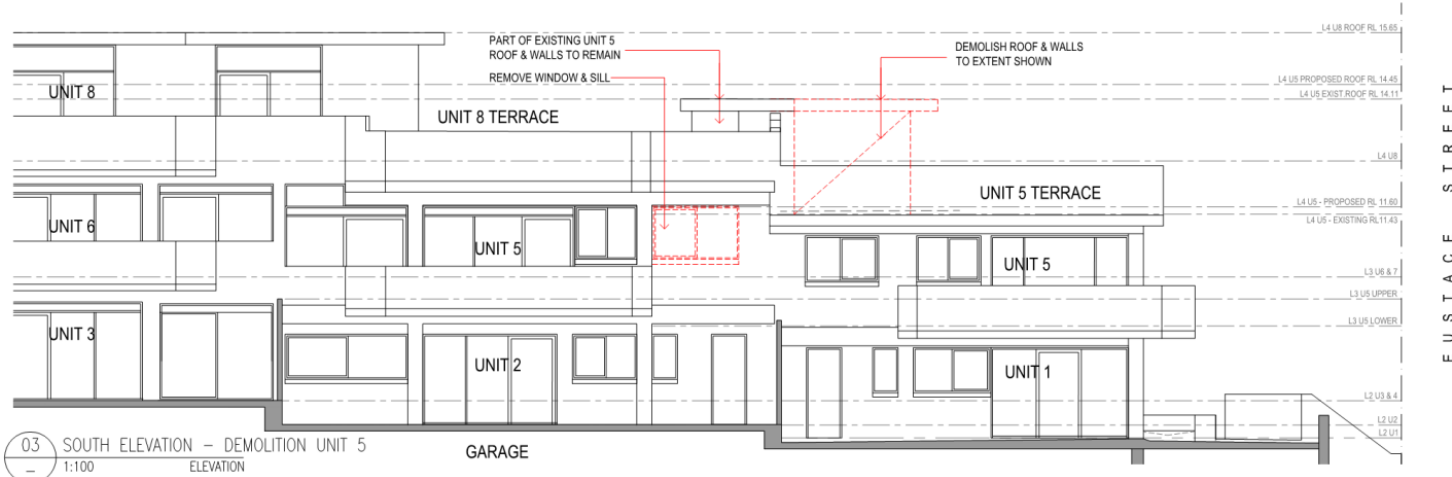


This drawing and design is subject to copyright and may not be reproduced without prior written consent. All dimensions to be verified and any discrepancies referred to Cradle Design prior to the commencement of any work. Use figured dimensions only.

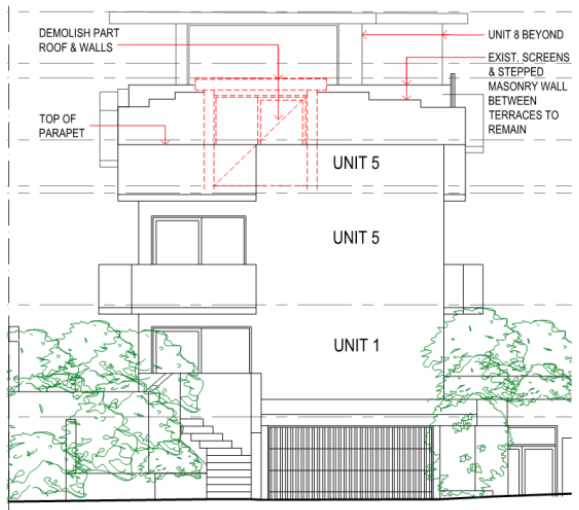
<p>STUDIO</p> <p>Shop 11 316 Sydney Road Balgownie NSW 2093 t: 02 9029 5332 e: info@cradle-design.com.au w: www.cradle-design.com</p> <p>cradle</p> <p>ORIENTATION</p>	<p>REVISION</p> <p>REV B - 02.12.2021 - DA</p>	<p>CLIENT</p> <p>UNIT 1 - D MORRIS UNIT 5 - G WOO & G McINNES ADDRESS UNITS 1 & 5, 9 EUSTACE STREET MANLY NSW 2095</p>	<p>PROJECT</p> <p>DRAWING TITLE UNIT 1 PROPOSED ELEVATIONS</p> <p>REFERENCE 549-9 EUSTACE ST - U1 & U5</p> <p>SCALE DRAWN 1:100@A3 DJ</p>	<p>DA 103 B</p> <p>DRAWING ISSUE</p>

Registered Design Record			
Project Name	549-9 Eustace Street, Manly, NSW 2095	Project No.	2021-001
Client Name	D Morris & G Woo & G McInnes	Contract No.	549-9 Eustace Street, Manly, NSW 2095
Design Title	Demolition & New Works	Design No.	2021-001
Rev No.	01	Rev Date	2021-12-01
Rev Description	Initial Design	Rev No.	01
Rev Date	2021-12-01	Rev Description	Initial Design
Rev No.	01	Rev Date	2021-12-01
Rev Description	Initial Design	Rev No.	01

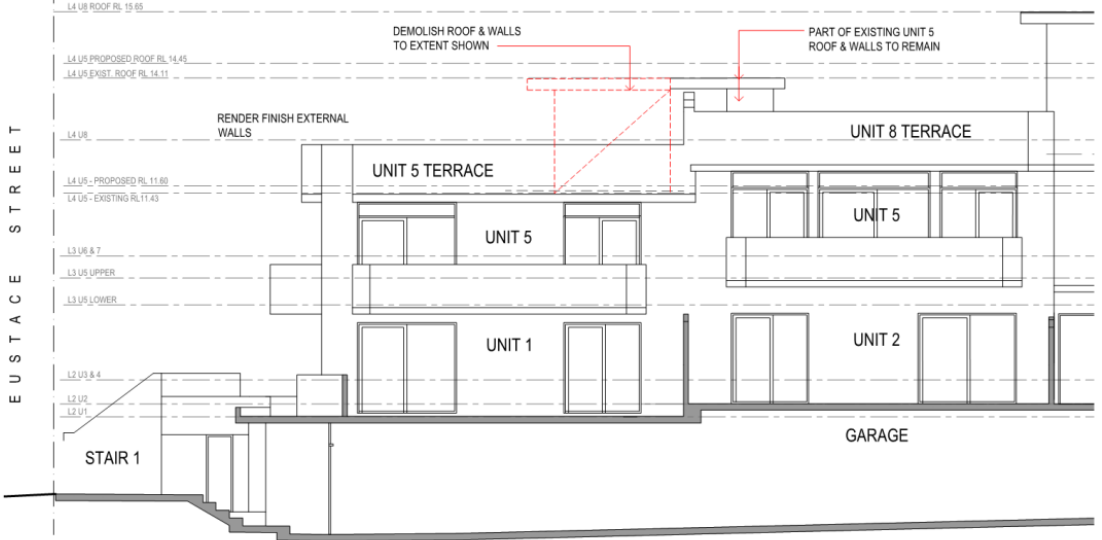
LEGEND	
	Existing Walls
	Element to be demolished
	New Works - UNIT 1
	New Works - UNIT 5 (section)
	New Works - UNIT 5 (section)



03 SOUTH ELEVATION - DEMOLITION UNIT 5
ELEVATION
1:100



01 EAST ELEVATION - DEMOLITION UNIT 5
ELEVATION
1:100



02 NORTH ELEVATION - DEMOLITION UNIT 5
ELEVATION
1:100

This drawing and design is subject to copyright and may not be reproduced without prior written consent. All dimensions to be verified and any discrepancies referred to Cradle Design prior to the commencement of any work. Use figured dimensions only.

STUDIO
Shop 11 316 Sydney Road
Balgownie NSW 2093
t: 02 9023 9332
e: info@cradledesign.com.au
w: www.cradledesign.com

cradle

ORIENTATION
North Architects:
Paul Lucas - 8786
Regan VanderWort-Walsh - 7904

REVISION	REVISION
REV B	02.12.2021 - DA

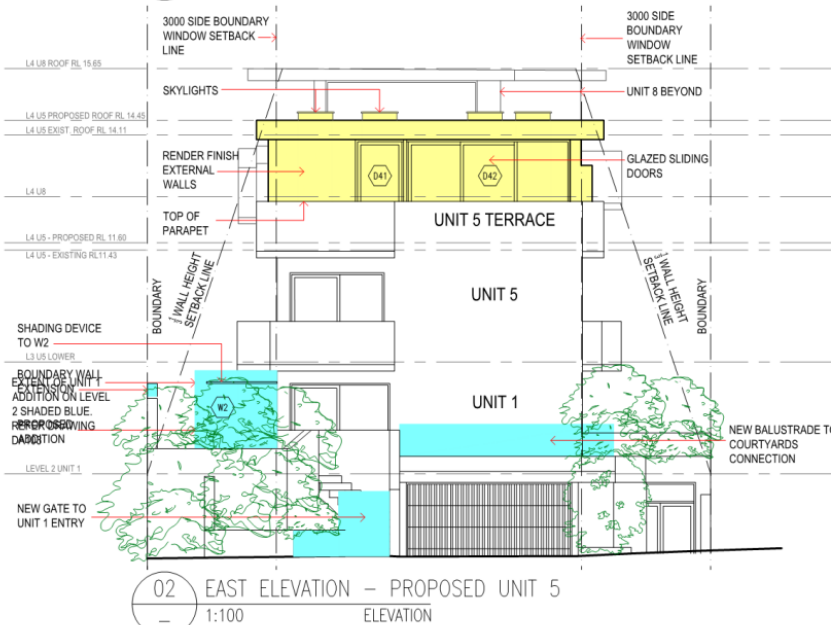
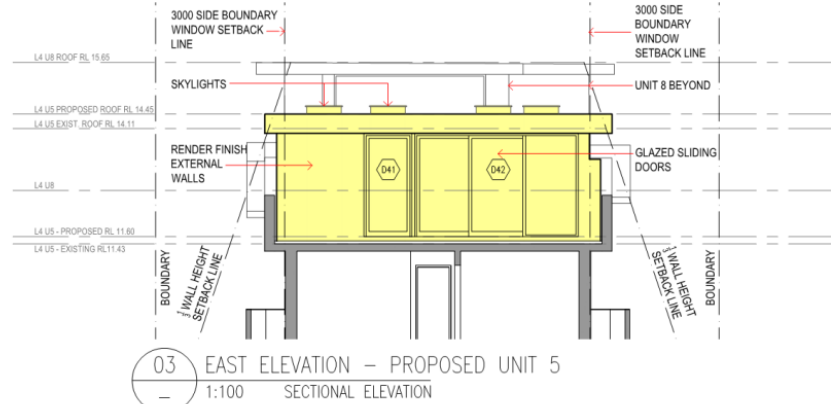
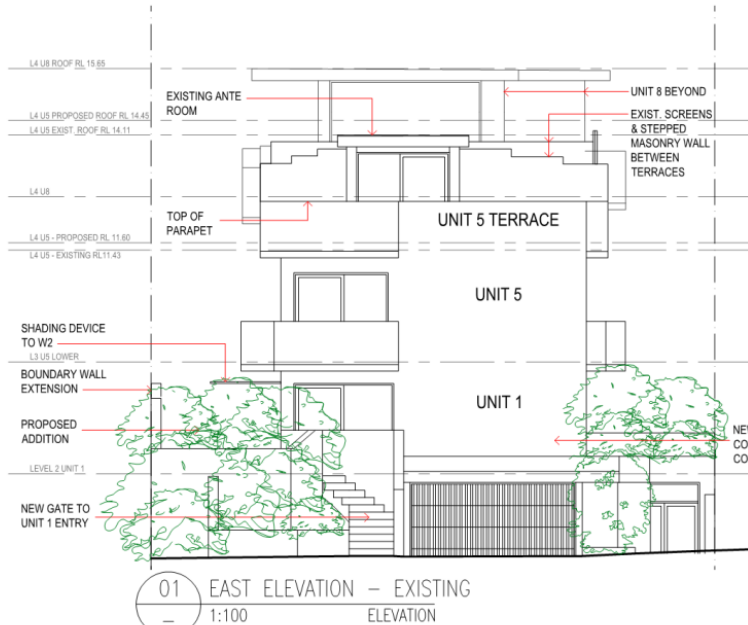
CLIENT	DETAILS
UNIT 1 - D MORRIS	UNIT 5 - G WOO & G McINNES
ADDRESS	UNITS 1 & 5, 9 EUSTACE STREET
	MANLY NSW 2095

DEVELOPMENT APPLICATION

PROJECT	DRAWING TITLE	REFERENCE	SCALE	DRAWN	DA 502 B
	UNIT 5 EXISTING & DEMOLITION ELEVATIONS	S49-9 EUSTACE ST - U1 & U5	1:100@A3	DJ	DRAWING ISSUE

Registered Design Record				
Project Address	Units 1, 5, 9 Eustace Street, Manly, NSW 2095	Project Title	Development & Refinement of Residential Development	Project No.
Client Name	G WOO & G McINNES	Contract No.	504	Block Code/Case Reg No
Design Title	UNIT 5 EAST ELEVATION	Drawing No.	DA-504-B	Scale
Rev/Date	Description	DRP Full Name	Rev No	Rev No
1/1/2022	Issue for RDR	Paul Lucas	1	1

LEGEND	
	Existing Walls
	Element to be demolished
	New Works - UNIT 1
	New Works - UNIT 1 (section)
	New Works - UNIT 5
	New Works - UNIT 5 (section)



This drawing and design is subject to copyright and may not be reproduced without prior written consent. All dimensions to be verified and any discrepancies referred to Cradle Design prior to the commencement of any work. Use figured dimensions only.

STUDIO
Shop 11 316 Sydney Road
Balgownie NSW 2093
t: 02 9029 5532
e: info@cradle-design.com.au
w: www.cradle-design.com

cradle

ORIENTATION

REVISION	REVISION
REV B	02.12.2021 - DA

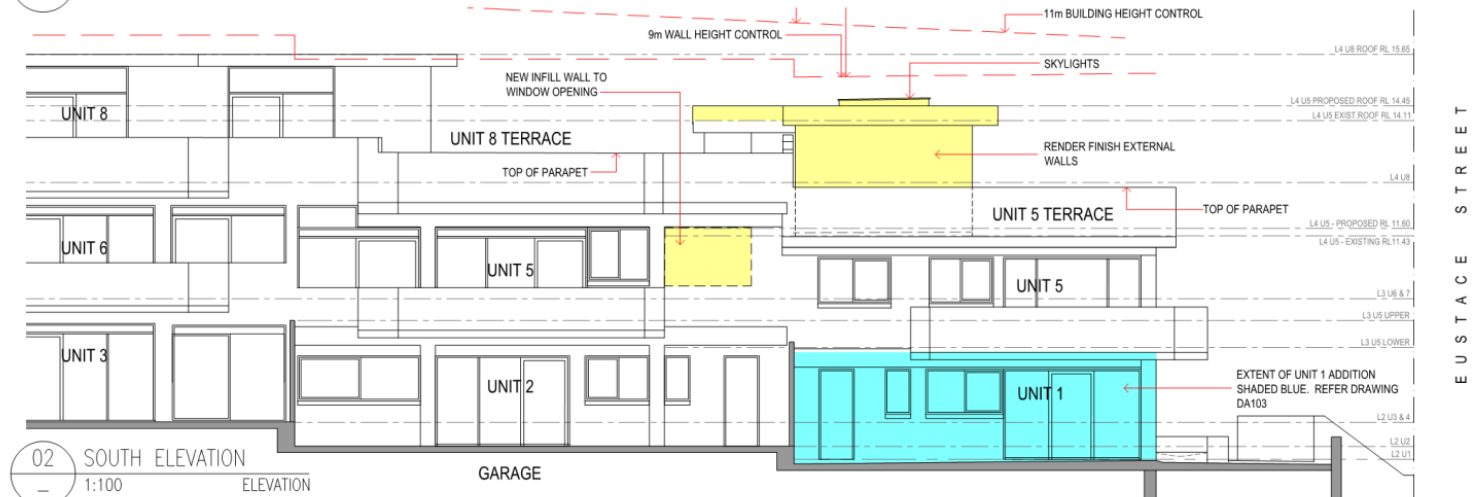
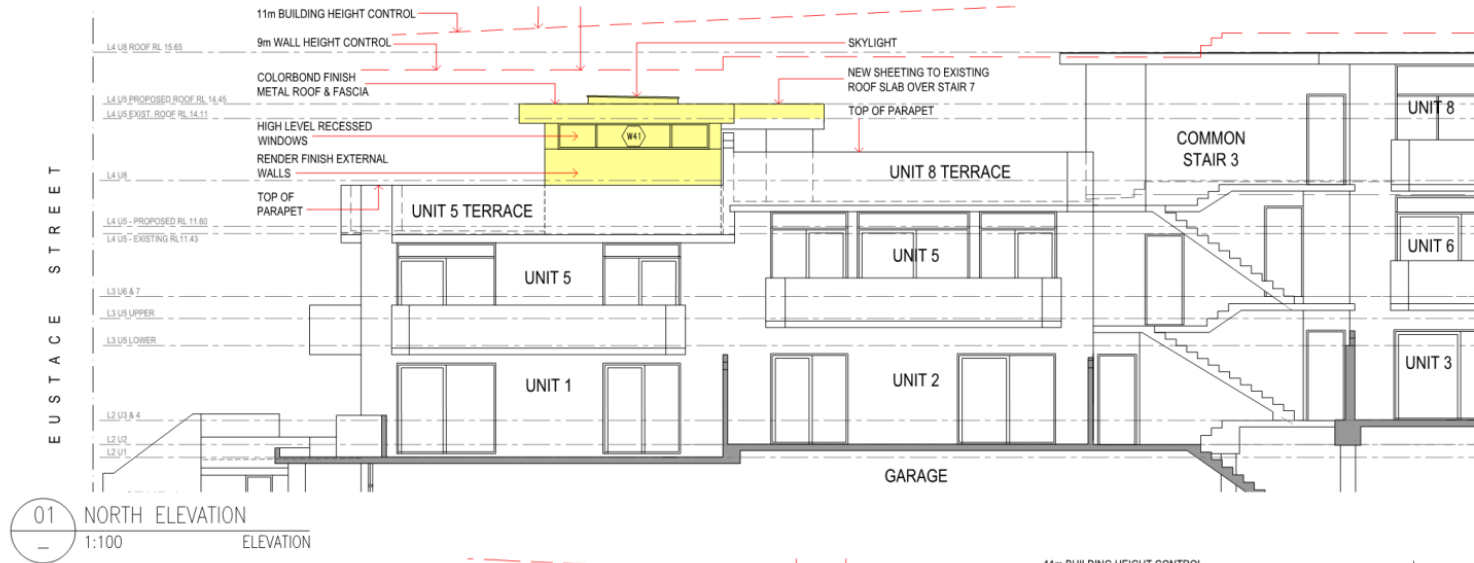
CLIENT	DETAILS
UNIT 1 - D MORRIS	UNIT 5 - G WOO & G McINNES
ADDRESS	UNITS 1 & 5, 9 EUSTACE STREET
	MANLY NSW 2095

PROJECT	DRAWING TITLE
DA 504 B	UNIT 5 EAST ELEVATIONS
	REFERENCE
	S49-9 EUSTACE ST - U1 & U5
	SCALE
	DRAWN
	1:100@A3
	DJ

Registered Design Record			
Project Address	Units 1, 2, 3, 5, 6, 7, 8 Eustace Street, Manly, NSW 2095	Project No.	549-9 EUSTACE ST - U1 & U5
Project Title	Development & Construction of Residential Units	Consent No.	2021/00000000000000000000
Design Title	Architectural Elevation	Design No.	DA 506 B
Rev/Date	Description	Rev/Date	Description
1/01/2022	Issue for RDR	1/01/2022	Issue for RDR

LEGEND	
	Existing Walls
	Element to be demolished
	New Works - UNIT 1
	New Works - UNIT 1 (section)
	New Works - UNIT 5
	New Works - UNIT 5 (section)

NOTE:
11m BUILDING HEIGHT CONTROL IS DERIVED FROM NATURAL GROUND LINE EXTRAPOLATED FROM ESTIMATED LEVELS AT NORTH BOUNDARY



This drawing and design is subject to copyright and may not be reproduced without prior written consent. All dimensions to be verified and any discrepancies referred to Cradle Design prior to the commencement of any work. Use figured dimensions only.

STUDIO
Shop 11 316 Sydney Road
Balgownie NSW 2093
t: 02 9029 5532
e: info@cradle-design.com.au
www.cradle-design.com

ORIENTATION

cradle

REVISION

REV B - 02.12.2021 - DA

DETAILS

CLIENT
UNIT 1 - D MORRIS
UNIT 5 - G WOO & G McINNES
ADDRESS
UNITS 1 & 5, 9 EUSTACE STREET
MANLY NSW 2095

PROJECT

DRAWING TITLE
UNIT 5 NORTH & SOUTH UNIT 5 ELEVATIONS
REFERENCE
S49-9 EUSTACE ST - U1 & U5
SCALE
DRAWN
1:100@A3 DJ

DA | 506 B
DRAWING ISSUE



This form relates to obligations under the Design and Building Practitioners Act 2020 and supporting Regulation

Instructions for completing this form

You must complete all Parts of this form.

Use this form in designs that consist of independent schedules, specifications or reports.

Attach the completed form to the front of the schedule, specification or report as a separate page before uploading to the NSW Planning Portal. Do not insert this form as an image or resize the form.

Regulated Design Record				
Project Address: Units 1 & 5, 9 Eustace Street, Manly NSW 2095				
Project Title: Alterations & Additions to Residential Flat Building				
Consent No: Not Applicable			Body Corporate Reg No: Not Applicable	
Drawing Title: Not Applicable			Drawing No: Not Applicable	
Rev	Date (dd.mm.yy)	Description	DP Full Name	Reg No
A	2.12.21	CI 4.6 Exception to a Development Standard	Paul Lucas	DEP000097



Alterations & Additions to:
SP 31425.

Units 1 & 5, 9 Eustace Street,
Manly
NSW 2095



**Clause 4.6 – Exception to a Development Standard in relation to;
Clause 4.4 – Floor Space Ratio of the Manly Local Environmental Plan
2013.**

Prepared by:
Cradle Design Pty Ltd
The Studio
Shop 1/ 316 Sydney Road
Balgowlah
NSW 2093
info@cradledesign.com.au
02 9029 5532
Nominated architects – **Regan VanderWert-Walsh – 7904**
Paul Lucas – 8786

© 2021 Cradle Design Pty Ltd

This document contains material protected under copyright and intellectual property laws and is to be used only by and for the intended client. Any unauthorized reprint or use of this material beyond the purpose for which it was created is prohibited. No part of this work may be copied, reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system without express written permission from Cradle Design Pty Ltd.

Introduction

This written request is made pursuant to the provisions of Clause 4.6 of the Manly Local Environmental Plan 2013 (the LEP). A variation is sought in relation to the Floor Space Ratio development standard of Clause 4.4 of the LEP, in relation to alterations and additions to units 1 & 5, 9 Eustace Street, Manly.

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.
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 Director-General has been obtained.
5. In deciding whether to grant concurrence, the Director-General must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
6. (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.

7. (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
8. (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection

with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4.

An exception to a development standard is required because the proposal will exceed the Floor Space Ratio development standard of Clause 4.4 of the LEP.

The Development Standard and the Variation Sought.

Manly Local Environmental Plan 2013 Clause 4.4 – Floor Space Ratio

The allowable Floor Space Ratio (FSR) map makes recommendation for a 0.75: 1 FSR.

The surveyed site area is 697.4m² on strata lot SP 31425.

PERMISSIBLE FLOOR AREA - 0.75/1 (697.4m² x 0.75) = 523.1m²

*EXISTING FLOOR AREA = approx. 618.2m² (18.2% over permissible)

ADDITIONAL UNIT 1 AREA = 14.4m²

ADDITIONAL UNIT 5 AREA = 19.3m²

*PROPOSED FLOOR AREA = 651.9m² (24.6% over permissible)

VARIATION BETWEEN PERMISSIBLE & PROPOSED = 24.6%

*Note – above areas excluded the basement carpark, common open areas and open staircases.

This exception statement is looking for dispensation from FSR of 0.75: 1 to 0.94: 1 on grounds that it meets the objectives of LEP Clause 4.4 FSR.

The Objectives of the Development Standard.

The purpose of the Floor Space Ratio standard is stated in the objectives in Clause 4.4 of the LEP as follows:

- (1) The objectives of this clause are as follows:
 - (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
 - (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
 - (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
 - (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
 - (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Why the objectives of the standard are achieved

This departure from the standards is consistent with the objectives of the FSR Standards because:

- The bulk and scale of proposed design is in keeping with the neighbouring properties. The new addition to unit 1 is not really visible from the street or adjoining neighbours. The new addition to unit 5 on the top floor is set-back to limit the impact of the impact on the street scape.
- The development does not impact any important Landscape and townscape features.
- The development has no impact on the existing landscape of the area.

How is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the development standard is unreasonable or unnecessary in this case due to;

- The existing FSR of the existing building being over the current zoned FSR. The proposal for additional FSR has negligible impact on neighbours, streetscape of the locality.
- The proposed Unit 1 & 5 additions will not take away any views of the foreshore, ocean or harbour from any neighbours.
- The proposed Unit 1 & 5 additions comply with front, rear and side boundary setbacks. As well as wall height and building height controls.
- The additional FSR for Unit 1, 9 Eustace Street would allow better use of the very large terrace area in all weather conditions, while providing greater privacy for the owners and neighbouring properties. The area of terrace proposed to be in-filled is in shadow for a majority of the year due to the bulk and scale of 9 Eustace Street and neighbouring properties. The additional FSR for Unit 5 would allow better use of the exposed roof deck in all weather conditions, while providing greater privacy for the owners and neighbouring properties (in particular Unit 8 and 11 Eustace Street).
- Unit 1 will still have a total of 58.7m² of outdoor terrace space including 15.5m² of principal private open space with minimum dimensions of 3m in any direction. Unit 5 will still have 32m² of outdoor terrace space with minimum dimensions in excess of 3m.
- In light of the scale of surrounding buildings and the limited impact of the design on the surrounding buildings, the development standard is unreasonable, unnecessary in this case.
- The development does not impact any important Landscape and townscape features
- Other similar developments on Eustace Street have similar FSR densities of 0.94/1 or above.

Are there sufficient environmental planning grounds to justify variation of the development standard(s)?

Yes.

The proposal is consistent with the relevant aims/ objectives of the LEP and the objectives for R1 General residential zone.

- It will have negligible negative impact and enhance the qualities of the existing building/ streetscape.
- It will not have any adverse impact on existing views or any views to and from the harbour and foreshores.
- The alterations and additions will be of a height, scale and design that complement's the design and character of the original and surrounding buildings.
- Nearby sites have similar or higher FSR's above the control approved - 5 Eustace Street and 2 Gilbert Street for example.
- The recently completed development adjacent being 2 West promenade is B2 with a LEP recommended height of 15m, the proposed development is modest in scale in comparison.

Is there any other relevant information to be considered to justify variation of the development standard(s)?

- The bulk and scale of proposed design is in keeping with the neighbouring property.
- The Unit 1 addition is set-back to the line of the front wall of the existing building and kept to a minimum height to limit the impact on the street scape as well as increasing visual and acoustic privacy for the occupants of Unit 1 and adjacent neighbours and occupants of other units on the site. The Unit 5 addition on the top floor is set-back 4.5m behind the existing building facade to minimise the impact on the street scape as well as increasing visual and acoustic privacy for local neighbours directly adjacent to the upper terrace. Refer to accompanying streetscape images.
- This application seeks dispensation from FSR of 0.75/1 to 0.94/1 on grounds that it meets the objectives of LEP Clause 4.4 Floor Space Ration and fits into its local context without adversely affecting neighbouring properties.

The exception to the Floor Space Ratio is considered to be well founded. Council as the consent authority can be satisfied for the reasons outlined, that the proposed development will be in the public interest because it is consistent with the objectives of the standards and the objectives of the R1 General residential zoning.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2588
----------------------------	-------------

Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot CP SP 5290, 69 Evans Street FRESHWATER NSW 2096
Proposed Development:	Alterations and additions to a residential flat building
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	The Owners Of Strata Plan 5290
Applicant:	Bruce Alexander Cuttance

Application Lodged:	25/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	02/02/2022 to 16/02/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 336.24%
Recommendation:	Approval

Estimated Cost of Works:	\$ 275,500.00
---------------------------------	---------------

EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Local Planning Panel (NBLPP) for consideration of Development Application DA2021/2588 for alterations and additions to an existing 11 storey residential flat building. The works are largely cosmetic to visually enhance the existing flat building and do not increase the overall height or footprint of the existing residential flat building.

The existing residential flat building is subject to a 1968 land use consent has a maximum height of 33.7m, which is significantly above the 8.5m height limit that is currently applied to the subject site. The proposed development includes a number of privacy screens on the north-western and south-eastern side elevations of the subject flat building. The top of the privacy screening on the 11th storey is 28.58m above the existing ground level, which is a technical breach of 336.24% from the 8.5m height

development standard. Despite this, the privacy screening is situated 5.12m below the existing maximum height of the residential flat building and confined to the existing building footprint. As such, the works will have negligible impacts upon the amenity of surrounding properties, specifically with regard to views, solar access, privacy and visual bulk. Additionally, it is considered that the proposed works will provide for greater articulation to the existing residential flat building, which will ensure the development maintains an appropriate relationship with the surrounding built environment.

The development is defined as a residential flat building, which is a prohibited land use within the R2 Low Density Residential zone under the provisions of Warringah Local Environmental Plan (Warringah LEP) 2011. Section 4.67(3) of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) stipulates that the provisions contained within an Environmental Planning Instrument do not strictly apply to a development that relies on existing use rights, which in this case applies to the subject application. Despite this, the applicant has submitted a written request under Clause 4.6 to vary the height standard, in line with the recent judgement in the NSW Land and Environment Court Case of *Made Property Group Pty Limited v North Sydney Council [2020] NSWLEC 1332*.

The applicant has demonstrated that compliance with the height standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the 336.24% variation to Clause 4.3 - Height of Buildings of Warringah LEP 2011.

One submission was received following the public exhibition period. The submission raised concerns of environmental pollution, solar access, visual impact, stormwater drainage, road visibility, cost of works and lack of consultation with neighbours. A detailed assessment of these issues has been conducted and the application has been found to be satisfactory.

It is recommended that the NBLPP approve the application, subject to the conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing residential flat building. The works consist of:

- New cladding to the existing garages including replacing garage doors.
- Extend the cladding of the bin room up to the same height of the garages.
- New covered roof over the bin storage area.
- New western wall beside entry doors, including letter boxes.
- Reclad the columns.
- New garage door and parapet above of unit 9's carport.
- New cladding on the wall of level 2 entry from the driveway.
- New visual privacy screens on balconies.

Note: Remediation works are currently being undertaken to the subject residential flat building pursuant to Subdivision 27 'Minor building alterations (external)' of SEPP (Exempt and Complying Development Codes) 2008. The works include re-painting, cement rendering, replacement of windows, repair works to non-structural walls and replacement of balustrading. These works are classified as exempt development pursuant to Subdivision 27 of the SEPP and do not require Council's consent. The applicant has submitted a statutory declaration to confirm the scope of remediation works currently being carried out as exempt development. A condition has been included with this consent to ensure these works are excluded from this development consent.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Development Control Plan - C8 Demolition and Construction
Warringah Development Control Plan - C9 Waste Management

SITE DESCRIPTION

Property Description:	Lot CP SP 5290 , 69 Evans Street FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of one allotment located on the south-western side of Evans Street, Freshwater.</p> <p>The site is regular in shape with a frontage of 16.19m and respective depths of 52.535m and 49.81m along the north-western and south-eastern side boundaries. The site has a surveyed area of 828.5sqm.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to Warringah LEP 2011 and accommodates a 11 storey residential flat building with a rooftop terrace and integrated parking.</p> <p>The site experiences a fall of approximately 11.4m that slopes away from the north-east towards the south-west. The site is situated on top of an escarpment.</p> <p>The site is devoid of any significant vegetation. Exposed sandstone rock outcrops are located on the low side of the property adjacent to the south-eastern boundary.</p>

Description of Surrounding Development

Located immediately adjacent to the south-east and north-west of the site are multi storey residential flat buildings of a similar age to the subject residential flat building. Development further towards the north-west is generally characterised by detached low density residential development (i.e. dwelling houses), ranging from 1-3 storeys in height and representing both older and modern housing stock. Located to the north-east on the opposite side of Evans Street is the Harbord Diggers site, which accommodates seniors housing, a registered club, a childcare centre and a health services facility. Located to the rear (south-west) of the site is Freshwater Beach.

Map:



SITE HISTORY

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

- Land Use Consent No. 68/120 for a 'B' or 'C' Class Residential Flat Building Containing 20 Flats approved by Council on 21 May 1968.
- Development Consent No. 98/235 for Alterations to Unit 9 within the residential flat building approved by Council on 3 August 1998.

APPLICATION HISTORY

The Development Assessment Planner examined the subject site and the surrounds on 24 February 2022.

Following the preliminary assessment of the application, which included the aforementioned site inspection, Council wrote to the applicant requesting the following information to proceed with the assessment:

- Revised Clause 4.6 written request to address all of the requirements within Clause 4.6 of Warringah LEP 2011.
- Statutory declaration to confirm the scope of the current remediation works that are being carried out as exempt development pursuant to SEPP (Exempt and Complying Development Codes) 2008.

The information was subsequently submitted to Council's satisfaction. The additional information did not alter the scope of works and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches CPP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to existing works being undertaken on the subject site and an amended Clause 4.6 request for the variation to Clause 4.3 - Height of Buildings within Warringah LEP 2011. The applicant submitted the additional information on 30 March 2022 and the information has been assessed accordingly.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures.</p>

Section 4.15 Matters for Consideration	Comments
	<p>This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	One submission was received following the notification period. The submission is addressed within the section of this report relating to 'Notification & Submissions Received'.
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

- Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision*

commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

Council's records indicate that the subject site was approved for a residential flat building under Land Use Consent No. 68/120 on 21 May 1968, prior to the coming into force of Warringah LEP 2011 on 9 December 2011.

2. Was the use of the land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The evidence available to Council reveals that the use of the land commenced as a lawful purpose prior to the coming into force of Warringah LEP 2011, which prohibits residential flat buildings within the R2 Low Density Residential zone.

3. Has the use of the land been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The works approved under Land Use Consent No. 68/120 have been lawfully carried out prior to the coming into force of Warringah LEP 2011, which prohibits residential flat buildings on the site.

- **What is "the land on which the existing use was carried out" for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?**

Meagher JA in *Steedman v Baulkham Hills Shire Council [No. 1] (1991) 87 LGERA 26* stated (at 27) the rule to be applied as follows: "if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose".

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

Building Height

The site is subject to a 8.5m maximum building height development standard, as applicable in the R2 zone. The existing building has an approximate height of 33.7m. The top of the privacy screen on the uppermost floor is located 28.58m above the existing ground level, which is 5.12m below the maximum height of the existing residential flat building.

Wall Height

The Warringah DCP 2011 stipulates that the maximum permitted wall height, when measured from the underside of the ceiling on the uppermost floor to the ground level, is 7.2m. The existing building has a maximum wall height of 28.67m. The proposal does not increase the wall height of the existing residential flat building.

Building Envelope

The site is subject to a side building envelope control that requires buildings to remain within an envelope that is determined by projecting planes at 45 degrees from 5m above the existing ground level along the side boundaries. The existing residential flat building protrudes significantly outside of the prescribed envelope for the site. However, the proposed privacy screens are affixed to the existing flat building and do not change the building envelope of the existing residential flat building.

Front Setback

The minimum setback required in the R2 zone is 6.5m. The proposed development includes a new roof over the existing bin storage area. Whilst the covered bin enclosure area is setback 3m from the front boundary, which does not meet the 6.5m numeric requirement, the new roof over the bin enclosure area does not exacerbate the existing numeric non-compliance, noting that the existing uncovered bin storage area is setback 3m from the front boundary. The covered bin enclosure is not visually excessive and will not have an unreasonable impact upon the streetscape.

Side Setback

The minimum side setback required in the R2 zone is 900mm. The new works are located outside of

the 900mm side setback areas.

Rear Setback

The minimum rear setback required in the R2 zone is 6m. The existing residential flat building is constructed to the rear boundary. The proposed development does not change the existing rear building line.

Concluding Comments of Bulk and Scale

The works proposed under this application are largely cosmetic and do not modify the height or footprint of the existing 11 storey residential flat building. In this regard, the proposed development is considered to maintain an appropriate relationship with the existing and future context of the locality

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The existing residential flat building will not be demolished. The resulting development will maintain a bulk and scale that is acceptable.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

As the works do not increase the existing building height and are confined to the existing footprint, the proposed development will not result in unacceptable amenity impacts, specifically with regards to views, solar access, privacy and visual bulk.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

The proposal has been suitably designed to ensure that it achieves an adequate standard of internal amenity. The louvre privacy screens will ensure outlooks are maintained from the existing units, whilst providing for an increased level of visual privacy.

Conclusion

The use has been approved under a previous environmental planning instrument and as such, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (Warringah LEP 2011).

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 02/02/2022 to 16/02/2022 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 1 submission/s from:

Name:	Address:
Noela Joy Hunt	13 / 67 Evans Street FRESHWATER NSW 2096

One submission was received following the public exhibition period. The following issues were raised in the submission:

- **Environmental Pollution from Remediation Works that are currently being undertaken to the Residential Flat Building**

The submission raises concern of environmental pollutants (i.e. concrete dust) occurring as a result of the remediation works that are currently being undertaken to the existing residential flat building.

Comment:

This concern is not related to the subject development application and therefore, is not a matter for consideration under Section 4.15 of the EP&A Act 1979. Furthermore, this matter will be referred to Council's Environmental Health/Compliance Department to undertake an investigation separate to this application.

- **Solar Access**

The submission raised concerns that the proposed development will create unreasonable overshadowing of adjoining properties.

Comment:

The works do not increase the height of the existing residential flat building and do not change the building footprint. As such, the proposal will have negligible impacts upon existing solar access to the adjacent residential flat buildings to the north-west and south-east.

- **Visual Impacts**

The submission raised concern of visual impacts from the privacy screening.

Comment:

The privacy screening provides greater articulation to the existing residential flat building and will not result in unreasonable visual impacts.

- **Length of Construction Timeframe**

The submission raised concerns of the construction timeframe.

Comment:

This is not a matter for consideration under Section 4.15 of the EP&A Act 1979.

- **Stormwater Drainage**

The submissions raised concern of how stormwater will be managed from the development.

Comment:

It is noted that the proposal includes a roof over the bin storage area. A condition has been included with this consent to ensure the stormwater drainage works comply with relevant Australian Standards.

- **Visibility when exiting adjoining properties in Vehicles**

The submission raised concern that that proposal would compromise road visibility when existing adjoining properties in vehicles.

Comment:

The works are confined to the existing building footprint and do not increase the overall height of the subject residential flat building. In this regard, the works are unlikely to reduce road visibility.

- **Cost of Works**

The submission raised concern that the cost of works may not be an accurate depiction of the works proposed.

Comment:

The application has been accompanied by a cost of works summary from the architect, which stipulates that the cost of works are \$275,500. The cost of works summary form has been prepared in accordance with Council's lodgement requirements for development with an estimated value below \$1,000,000.

Conclusion

The concerns raised within the submission have been addressed above and resolved through conditions where necessary. The concern do not warrant refusal of the application, subject to the inclusion of appropriate conditions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, no conditions recommended.</p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
NECC (Coast and Catchments)	<p>Supported, no conditions recommended</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Coastal Management) 2018 (clauses 14 & 15); and • Relevant LEP and DCP clauses. <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p> <p>The application is supported without conditions.</p>
Parks, reserves, beaches, foreshore	<p>Supported, subject to conditions</p> <p>The development application is for alterations and additions to a residential flat building.</p> <p>The property adjoins Freshwater Beach Reserve downslope.</p> <p>All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Freshwater Beach Reserve. No physical encroachments over the site boundaries are permitted.</p> <p>Parks, Reserves and Foreshores raise no concerns with the development proposal subject to imposed conditions.</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 19 - Bushland in Urban Areas

The site adjoins land zone RE1 Public Recreation to the rear. For land adjoining land zoned or reserved for public open space, Council shall not grant development consent unless it has taken into account:

- (c) the need to retain any bushland on the land,*
- (d) the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and*
- (e) any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.*

Comment:

The proposed development does not result in the removal of vegetation on the adjacent public open space. A condition has been included with this consent that prevents access through the adjoining reserve during construction works to minimise potential impacts. Furthermore, sediment and erosion control measures will be in place to prevent sediment migration to adjoining land.

Conclusion

Based on the above assessment, it is concluded that the proposal demonstrates consistency with SEPP 19.

SEPP 65 - Design Quality of Residential Apartment Development

SEPP 65 – Design Quality of Residential Apartment Development states the following:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,*
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,*
- (iii) the conversion of an existing building, and*

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking) ,and

(c) the building concerned contains at least 4 or more dwellings.

Comment:

Whilst the existing residential flat building is 11 storeys in height and contains 20 dwellings, the proposed works are largely cosmetic and do not increase the height of the existing residential flat

building or alter the footprint of the building. In addition, the works do not result in a net reduction or increase of dwellings within the residential flat building. As such, it is considered that the proposed works do not constitute a substantial redevelopment or substantial refurbishment of the existing residential flat building.

For these reasons, the provisions of SEPP 65 do not apply to the proposed development. No further consideration of this Policy is required for the purpose of this assessment.

SEPP (Building Sustainability Index: BASIX) 2004

The Environmental Planning and Assessment Regulation 2021 stipulates types of development that is excluded from BASIX requirements.

BASIX excluded development means the following development—

- (a) development for the purposes of a garage, storeroom, carport, gazebo, verandah or awning,
- (b) development that involves the alteration of a building listed on the State Heritage Register under the [Heritage Act 1977](#),
- (c) development that involves the alteration of a building resulting in a space that cannot be fully enclosed, other than a space that can be fully enclosed but for a vent needed for the safe operation of a gas appliance,

Example—

A verandah that is open or enclosed by a screen, mesh or other material that permits the free and uncontrolled flow of air.

Comment:

The proposed works are not connected to internal habitable areas within the existing residential flat building. The privacy screens and associated external works proposed will not preclude free and uncontrolled flow of air into the building. In this regard, the works are considered 'BASIX excluded development'.

SEPP (Coastal Management) 2018

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal Management

The site is located within the Coastal Use Area pursuant to this SEPP. Accordingly, an assessment has been carried out against Clauses 14 and 15 of the SEPP as follows:

2.11 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—

(a) has considered whether the proposed development is likely to cause an adverse impact on the following—

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) Aboriginal cultural heritage, practices and places,*
 - (v) cultural and built environment heritage, and*
- (b) is satisfied that—*
- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*
- (2) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

Comment:

The works are confined to the existing building footprint and do not increase the maximum height of the existing residential flat building. In this regard, the proposed development will not result in overshadowing, wind funnelling and the loss of views from public places to the foreshore area. In addition, the works will not preclude access to or along the foreshore. It is considered that the provision of louvre privacy screening will provide for greater articulation to the building and thus, the works will not detract from the visual amenity of the area.

The site is also sufficiently separated from sites with built or environmental heritage significance and therefore, the development will not have an adverse impact upon cultural and built environmental heritage. Moreover, the site is not mapped within an area known for containing Aboriginal heritage significance and therefore, the proposal will not have an adverse impact upon Aboriginal cultural heritage, practice or places.

The Development Assessment Planner has taken into account the surrounding coastal and built environment and the bulk, size and scale of the proposed development and concluded that the proposal is suitable within this setting given the historical nature of the existing flat building.

For the reasons outlined above, it is considered that the proposed development has been suitably designed, sited and will be managed to avoid an adverse impact upon the matters referred to in Clause 2.11 of this SEPP.

2.12 Development in coastal zone generally—development not to increase risk of coastal

hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Given the minor nature of the proposal and mitigation measures employed during construction works (i.e. sediment and erosion control measures), it is considered that the proposal is unlikely to cause increased risk of coastal hazards within the locality.

Chapter 4 Remediation of land

4.1 Object of this Chapter

- (1) The object of this Chapter is to provide for a Statewide planning approach to the remediation of contaminated land.*
- (2) In particular, this Chapter aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment—*
 - (a) by specifying when consent is required, and when it is not required, for a remediation work, and*
 - (b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and*
 - (c) by requiring that a remediation work meet certain standards and notification requirements.*

Comment:

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 as the land is considered to be suitable for the residential land use.

Conclusion

Having regard to the above assessment, it is concluded that the proposal is consistent with the relevant requirements within SEPP (Resilience and Hazards) 2021.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	28.58m	336.24%	No

Compliance Assessment

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

Detailed Assessment

Zone R2 Low Density Residential

The proposed development relies on existing use rights. As such, compliance with the zone objectives is not relevant to this application.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Existing:	33.1m (top of building parapet)
Proposed:	28.58m (top of privacy screen on 11th storey)
Percentage variation to requirement:	336.24%

The site is subject to a 8.5m maximum building height under the requirements of Clause 4.3 of the Warringah LEP 2011. The top of the proposed privacy screening on the 11th storey is situated 28.58m above the existing ground level, which represents a 336.24% technical variation to the development standard. However, it is noted that the privacy screening is located 5.12m below the existing maximum height of the subject residential flat building.

Whilst Section 4.67(3) of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) stipulates that the provisions contained within an Environmental Planning Instrument do not strictly apply to a development that relies on existing use rights, the recent judgement in the Land and Environment Court Case of *Made Property Group Pty Limited v North Sydney Council [2020] NSWLEC 1332* required a written request pursuant to Clause 4.6 to be submitted to vary a development standard, despite the subject development benefiting from existing use rights.

Accordingly, an assessment against the matters within Clause 4.6 of Warringah LEP 2011 is provided below.

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 judgements 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 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 applicant's written request argues, in part:

"It is considered that there are sufficient environmental planning grounds to justify contravening the development standard.

Although the existing residential flat building already exceeds the prescribed height, and although the proposed privacy screens are within the existing building envelope, they exceed the height limit of 8.5 metres.

As indicated previously the overall height of the existing residential flat building does not change as a result of the proposed privacy screens, and its contextual relationship with adjoining development, as well as the streetscape, will be maintained.

The proposed addition of the privacy screens do not cause any adverse environmental impacts in terms of amenity to adjoining property owners such as overshadowing, privacy or loss of views.

In that regard, whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1), it is relevant to note that objective (b) provides: "to achieve better outcomes for and from (my emphasis) development by allowing flexibility in particular circumstances." (sic)

It should be noted at the outset that in Initial Action, the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

It is considered that the variation to the development standard in this instance, does not reduce the amenity of other development in the vicinity of the site or the public domain, but results in significantly enhanced amenity for the occupants of the existing residential flat building in terms of screening of existing services, as well as providing increased privacy on their balconies.

The various proportions of the existing residential flat building have been maintained that contribute to the visual appearance of the building, enabling a visual identification of a built form that remains appropriate for the site.

More importantly it is considered that a flexibility in relation to the height standard, results in a better planning outcome being achieved, and increased amenity for the occupants of the existing residential flat building.

Further to the above it is noted that existing view corridors are not adversely affected by the provision of the privacy screens.

In addition, the variation to the development standard does not result in additional overshadowing, as there are no changes proposed to the existing height of the building envelope and or footprint of the existing building, and there are no shadow adverse impacts.

Additionally, the variation to the development standard does not result in any increase of impacts on the streetscape.

That is this proposal does not change the height, form, design and finished materials of the facades facing Evans Street.

The form of the development, its appearance and its size, as seen from the public domain, will not be changed as a result of this application, and is entirely consistent with the existing character of the area.

It is considered that the absence of external impacts, the increased internal amenity for the occupants of the residential flat building, constitute sufficient environmental planning grounds to justify a departure

from the development standard, which could not be otherwise achieved if the prescribed height limit was maintained.

The proposed development also achieves the relevant objects in Section 1.3 of the EPA Act, in that the proposed modification specifically:

- Promotes the orderly and economic use and development of land through the efficient use of infrastructure (roads, water, sewer, electricity, community services, and facilities), to meet the housing needs of the community.
- Does not adversely impact on the conservation of threatened and other species of native animals and plants, ecological communities and their habitats (1.3(e)).
- Provides increased articulation of the existing residential flat building, without any increase in height or footprint of that building, providing increased amenity for the residents of the residential flat building (1.3(g)).
- Provides for the proper construction and ultimate use of the balcony areas, in addition to the screening of services, ensuring the continued maintenance of the approved residential flat building, and the protection of the health and safety of its future occupants (1.3(h)).

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the height control standard.

It is noted that in Initial Action, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

- 86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.
- 87. The second matter was in cl 4.6(3) (b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6 (3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard".

Planner Comment:

Council's Development Assessment Planner generally agrees with the applicant's justification to contravene the development standard. In particular, it is agreed that whilst the privacy screening

exceeds the 8.5m height plane the works are confined the existing building footprint and do not increase the maximum height of the existing residential flat building. In this regard, the works will have negligible impacts on the amenity of surrounding properties, with specific regard to solar access, privacy, visual bulk and views. It is considered that the privacy screening will provide for greater articulation to the existing residential flat building, which will enhance the streetscape. Overall, the non-compliance with the height standard will increase the internal amenity of the occupants of the residential flat building, through obscuring existing services and providing for greater privacy to each unit, without resulting in adverse streetscape or amenity impacts.

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 Warringah LEP 2011 are:

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

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

Comment:

The privacy screening is situated 5.12m below the maximum height of the existing residential flat building and will maintain the existing building envelope. Therefore, the height and scale of the building will continue to maintain an appropriate visual relationship with surrounding and nearby development.

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

Comment:

The privacy screens do not increase the maximum height of the existing building and are located within an existing footprint. In this regard, the proposal will not result in any unreasonable amenity impacts, specifically with regard to visual bulk, views, privacy and solar access.

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

Comment:

The proposal does not result in a reduction of landscaping on the site.

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

Comment:

It is considered that the privacy screening will provide for greater articulation to the existing residential flat building, which will ensure that the development does not have an unreasonable visual impact when viewed from Freshwater Beach and surrounding public places.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The subject site and adjacent properties immediately to the north-west and south-east do not contain low density residential development and accommodate multi storey residential flat buildings. However, the proposed development does not increase the density or height of the subject flat building, thereby ensuring the overall bulk and scale of the development continues to maintain an appropriate visual relationship with the surrounding environment.

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

Comment:

The site will retain the residential land use.

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

Comment:

The proposal does not result in a reduction of landscaping on the site.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone and Clause 4.3 - Height of Buildings.

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 & Infrastructure, 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.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	28.67m (no change to existing)	N/A	N/A
B3 Side Boundary Envelope	5m then projected at 45 degrees (NW)	privacy screens outside of envelope	up to 271.17%	No
	5m then projected at 45 degrees (SE)	privacy screens outside of envelope	up to 256.03%	No
B5 Side Boundary Setbacks	0.9m (NW)	no change	N/A	N/A
	0.9m (SE)	no change	N/A	N/A
B7 Front Boundary Setbacks	6.5m	3m (roof over bin storage) - front setback consistent with only change being the roof covering	53.85%	No
B9 Rear Boundary Setbacks	6m	no change	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	no change	N/A	N/A

Note: The development is considered against relevant built form controls applicable for the site. It should be noted that the above controls are generally applied to development permissible with consent in the R2 Low Density Residential zone.

Part B Built Form Controls

The Land and Environment Court Planning Principle established in the judgement by Senior Commissioner Roseth in Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71 confirms that the provisions of Environmental Planning Instruments and Development Control Plans that derogate or

detract from the benefit endowed on a site by existing use rights do not apply to the assessment of applications on sites where existing use rights apply. Therefore, zone objectives and planning controls that govern the size of a development (i.e building height, floor space ratio, building envelope and setbacks) are not strictly applied where existing use rights apply. This includes qualitative provisions as well as quantitative provisions. Having regard to the above case law, the built form controls contained within the WDCP 2011 compliance table are not strictly applied to this particular application and is, therefore, only included as a record to identify how the proposed development relates to applicable planning controls that would otherwise apply to the subject site if existing use rights did not apply. In this regard, no further assessment is provided in this report relating to the numerical non-compliances identified within the Built Form Controls table above. Instead, this report includes a merit based assessment having regard to the matters for consideration prescribed within Section 4.15 of the Environmental Planning and Assessment Act 1979.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C4 Stormwater	Yes	Yes
C8 Demolition and Construction	No	Yes
C9 Waste Management	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

C8 Demolition and Construction

The application was not accompanied by a Waste Management Plan. To ensure the proper disposal of builder's waste, a suitable condition has been included with this consent requiring the applicant to prepare a Waste Management Plan in accordance with Council's Waste Management Guidelines. The plan is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

C9 Waste Management

The application was not accompanied by a Waste Management Plan. To ensure the proper disposal of builder's waste, a suitable condition has been included with this consent requiring the applicant to prepare a Waste Management Plan in accordance with Council's Waste Management Guidelines. The plan is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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 \$2,755 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$275,500.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 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.

The proposed development involves alterations and additions to an existing residential flat building.

The maximum height of the proposed development is 28.58m, which exceeds the 8.5m height limit. Despite this, the privacy screening is situated 5.12m below the maximum height of the residential flat building and confined to the existing building footprint.

When considered against the Warringah LEP 2011 and Warringah DCP 2011 objectives, the proposed development is considered to align with the relevant aims and requirements of these Policies, noting that the development will not result in any unacceptable amenity or environmental impacts.

The concerns raised within the submission have been addressed and do not warrant refusal of the application.

Therefore, the application is recommended for approval.

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 buildings development standard pursuant to clause 4.6 of the WLEP 2011 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/2588 for Alterations and additions to a residential flat building on land at Lot CP SP 5290, 69 Evans Street, FRESHWATER, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
CD 02	September 2021	Woodhouse & Danks Architects
CD 03	September 2021	Woodhouse & Danks Architects
CD 04	September 2021	Woodhouse & Danks Architects
CD 05	September 2021	Woodhouse & Danks Architects
CD 06	September 2021	Woodhouse & Danks Architects
CD 07	September 2021	Woodhouse & Danks Architects
CD 08	September 2021	Woodhouse & Danks Architects
CD 09	September 2021	Woodhouse & Danks Architects
CD 10	September 2021	Woodhouse & Danks Architects
CD 11	September 2021	Woodhouse & Danks Architects
CD 12	September 2021	Woodhouse & Danks Architects
CD 13	September 2021	Woodhouse & Danks

		Architects
CD 14	September 2021	Woodhouse & Danks Architects
CD 20	September 2021	Woodhouse & Danks Architects
CD 21a	December 2021	Woodhouse & Danks Architects
CD 22a	December 2021	Woodhouse & Danks Architects
CD 40	August 2021	Woodhouse & Danks Architects
CD 41	August 2021	Woodhouse & Danks Architects
CD 42	August 2021	Woodhouse & Danks Architects
CD 43	August 2021	Woodhouse & Danks Architects
CD 44a	December 2021	Woodhouse & Danks Architects
CD 45	August 2021	Woodhouse & Danks Architects
CD 45	August 2021	Woodhouse & Danks Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BCA Report	December 2021	Woodhouse & Danks Architects
Preliminary Geotechnical Assessment Ref. J3764	29 September 2021	White Geotechnical Group

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

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

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

2. 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.

4. **No Consent for Remediation Works currently being undertaken**

No consent is granted for the remediation works currently being undertaken to the residential flat building. This includes re-painting, cement rendering, replacement of windows, repair works to non-structural walls and replacement of balustrading.

Reason: The works constitute exempt development and are excluded from the scope of works

proposed under this Development Application.

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$2,755.00 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 \$275,500.00.

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

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.

6. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security 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).

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

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

7. **Compliance with Standards**

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

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

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

8. **External Finishes to Roof**

The external finish to the roof over the bin storage area shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

9. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with Council's Waste Management Guidelines.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

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

Reason: To protect the surrounding environment from the effects of sedimentation and erosion

from the site.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **No Access Through Land Owned or Managed by Council**
Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.
- Reason: Public safety, landscape amenity and tree protection.
12. **Storage of Materials on Land Owned or Managed by Council Prohibited**
The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.
- Reason: Public safety and environmental protection.
13. **Protection of Council's Public Assets**
Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.
- Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.
- Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.
- Should any problems arise with regard to the existing trees on public land during the construction period, the applicant is to immediately contact Council's Tree Services section and resolve the matter to Council's satisfaction.
- Reason: To protect and/or restore any damaged public asset.
14. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- o Work Health and Safety Act;
 - o Work Health and Safety Regulation;
 - o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
 - o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
 - o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
 - o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.
- Reason: For the protection of the environment and human health.
15. **Waste Management During Development**
The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

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

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

16. **Stormwater Disposal**

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

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

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

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

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

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

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

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

Reason: To ensure bushland management.

1200 MM WIDTH SLIDING PRIVACY SCREEN
VERTICAL PRIVACY SCREEN



GENERAL NOTES
1. CONTRACTORS MUST VERIFY ALL DIMENSIONS ON SITE PRIOR TO THE COMMENCEMENT OF ANY WORK ON THE PROJECT.
2. HORIZONTAL DIMENSIONS TO UNLESS OTHERWISE SPECIFIED SHALL BE IN METERS TO THE CENTRE OF THE ELEMENT.
3. VERTICAL DIMENSIONS SHALL BE TO THE FINISHED FLOOR LEVEL UNLESS OTHERWISE SPECIFIED.
4. THE USER SHALL VERIFY THE DIMENSIONS AND LOCATIONS OF ALL ELEMENTS ON SITE PRIOR TO COMMENCEMENT OF WORK.
5. DIMENSIONS TO UNLESS OTHERWISE SPECIFIED SHALL BE IN METERS TO THE CENTRE OF THE ELEMENT.
6. VERTICAL DIMENSIONS SHALL BE TO THE FINISHED FLOOR LEVEL UNLESS OTHERWISE SPECIFIED.

NO.	DATE	REVISION/DESCRIPTION	NO.	DATE	REVISION/DESCRIPTION	NO.	DATE	REVISION/DESCRIPTION	NO.	DATE	REVISION/DESCRIPTION
06/09/21		ISSUE									

Proposed Alteration
69 Evans Street, Freshwater
NSW
ELEVATION EASTERN WALL

WOODHOUSE & DANKS ARCHITECTS
20005
CD 20 -
SCALE 1:200
DATE 05/04/2021
DRAWN BY
CHECKED BY

1200 MM WIDTH SLIDING PRIVACY SCREEN
VERTICAL PRIVACY SCREEN

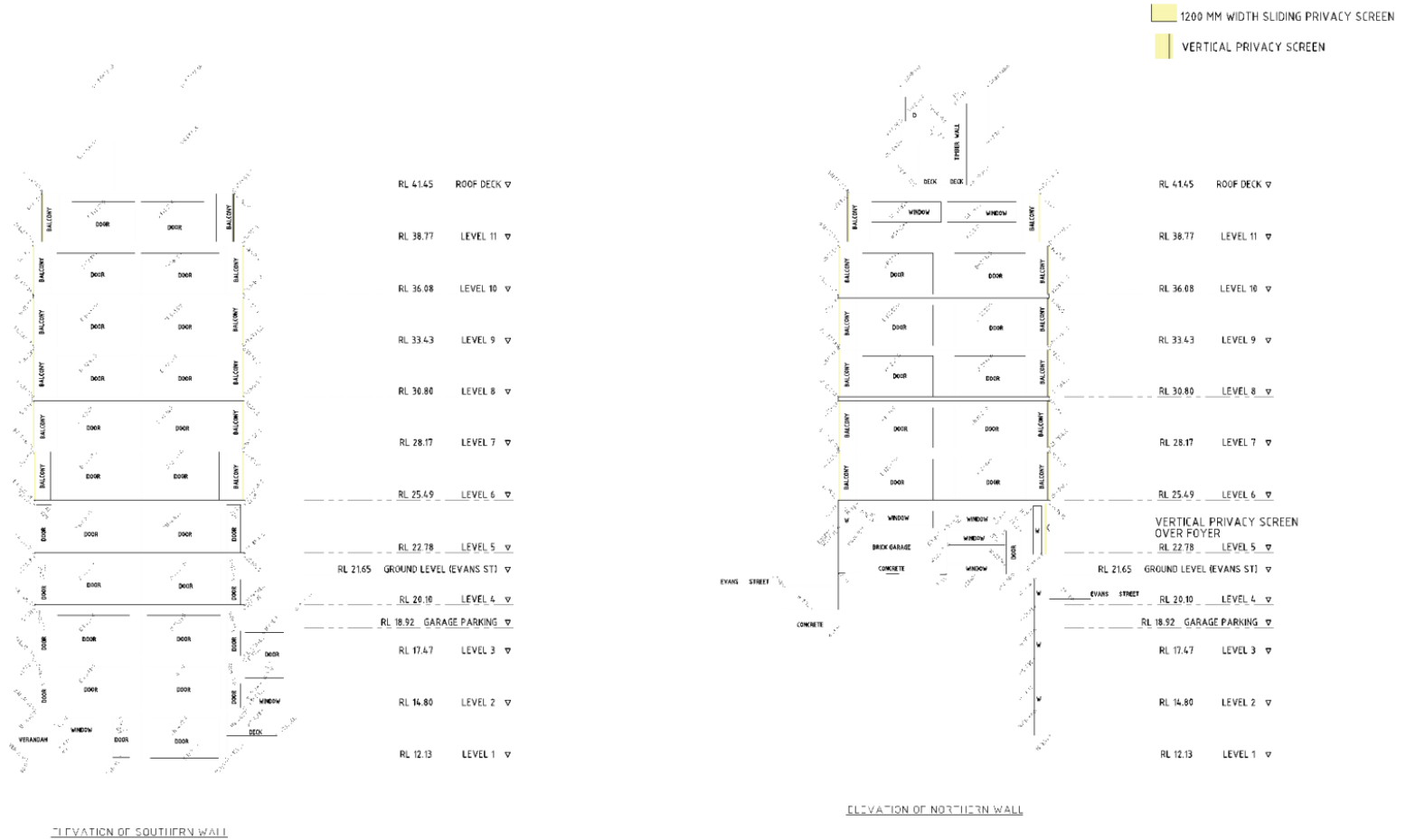


GENERAL NOTES
1. ALL DIMENSIONS UNLESS OTHERWISE SPECIFIED ARE TO FACE
2. ALL DIMENSIONS TO BE USED IN PREFERENCE TO SCALED DIMENSIONS
3. ALL DIMENSIONS TO BE USED IN PREFERENCE TO SCALED DIMENSIONS
4. ALL DIMENSIONS TO BE USED IN PREFERENCE TO SCALED DIMENSIONS
5. ALL DIMENSIONS TO BE USED IN PREFERENCE TO SCALED DIMENSIONS

NO. 24.1 REVISION OR ISSUE
DATE 06.09.21
ISSUE
DATE 14.12.21
"a" Vertical privacy screen over foyer

Proposed Alteration
69 Evans Street, Freshwater
NSW
ELEVATION WESTERN WALL

WOODHOUSE & DANKS ARCHITECTS
2005
CD 21 a
SCALE 1:200M
DATE 15.04.2021



GENERAL NOTES
1. CONTRACTORS MUST VERIFY ALL DIMENSIONS ON SITE PRIOR TO THE COMMENCEMENT OF ANY WORK ON THE SITE.
2. HOUSEHOLD DIMENSIONS TO UNLESS OTHERWISE SPECIFIED IN SCALE 1:50 DIMENSIONS.
3. ALL DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED.
4. TO VERIFY ALL DIMENSIONS ON SITE PRIOR TO THE COMMENCEMENT OF ANY WORK ON THE SITE.
5. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED.
6. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED.

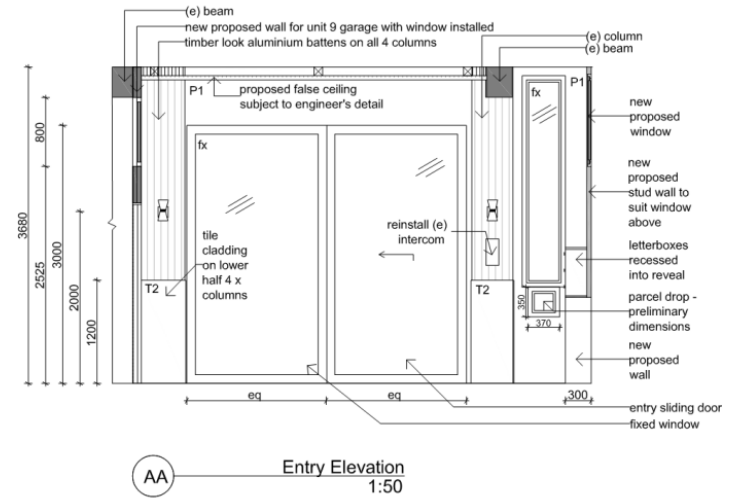
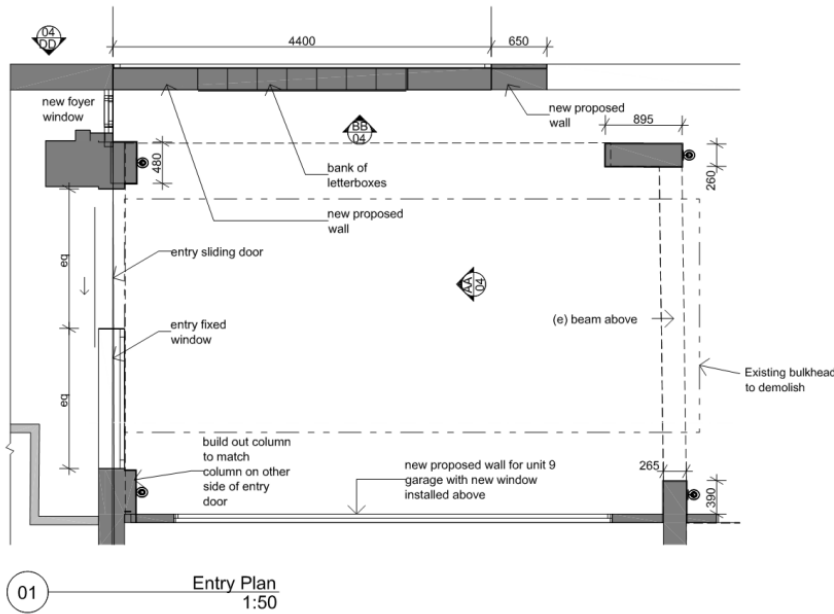
NO.	DATE	REVISION/DESCRIPTION
1	14.12.21	1st Vertical privacy screen over foyer
2	06.09.21	ISSUE

Proposed Alteration
69 Evans Street, Freshwater
NSW

ELEVATION SOUTHERN & NORTHERN WALL

WOODHOUSE & DANKS ARCHITECTS
20005
CD 22 a

DATE: 08.12.2021
SCALE: 1:100 M



GENERAL NOTES
1. CONTRACTORS MUST VERIFY ALL DIMENSIONS ON SITE PRIOR TO THE COMMENCEMENT OF ANY WORK OR THE PREPARATION OF SHOP DRAWINGS.
2. FIGURED DIMENSIONS TO BE USED IN PREFERENCE TO SCALED DIMENSIONS.
USE OF DIMENSIONS
The design and details shown on these drawings are applicable to this project only and may not be repeated in other projects or used for any other project or purpose without the written permission of Woodhouse & Danks Pty. Ltd. with whom copyright resides.

No.	DATE	REVISION OR ISSUE	DWG. CHK. No.	DATE	REVISION OR ISSUE	DWG. CHK. No.	DATE	REVISION OR ISSUE
							09.08.21	ISSUE

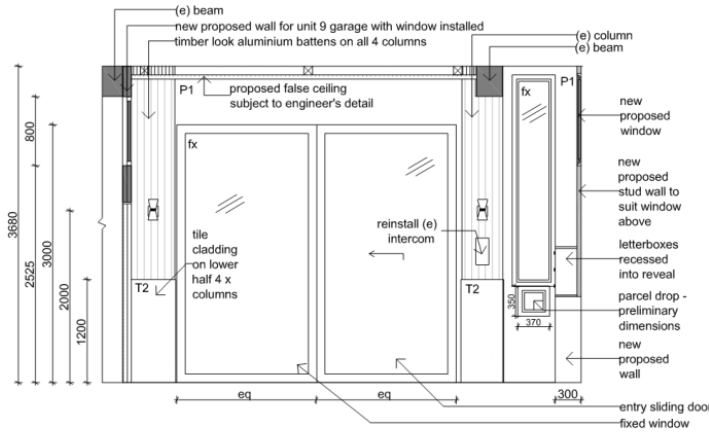
Proposed Alteration
69 Evans Street, Freshwater
NSW

ENTRY PLAN & ELEVATION

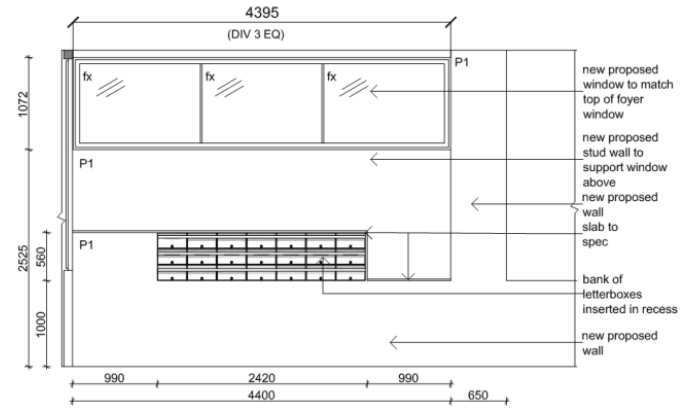
'Nominated Architect Stephen Fayle'
DESIGN SUPPLIED BY: KH DESIGN GROUP

WOODHOUSE & DANKS ARCHITECTS
Suite 207 Level 2, 25 Date Street, Brookvale NSW 2100
T: (02) 9539 8810
E: admin@woodhousedanks.com.au

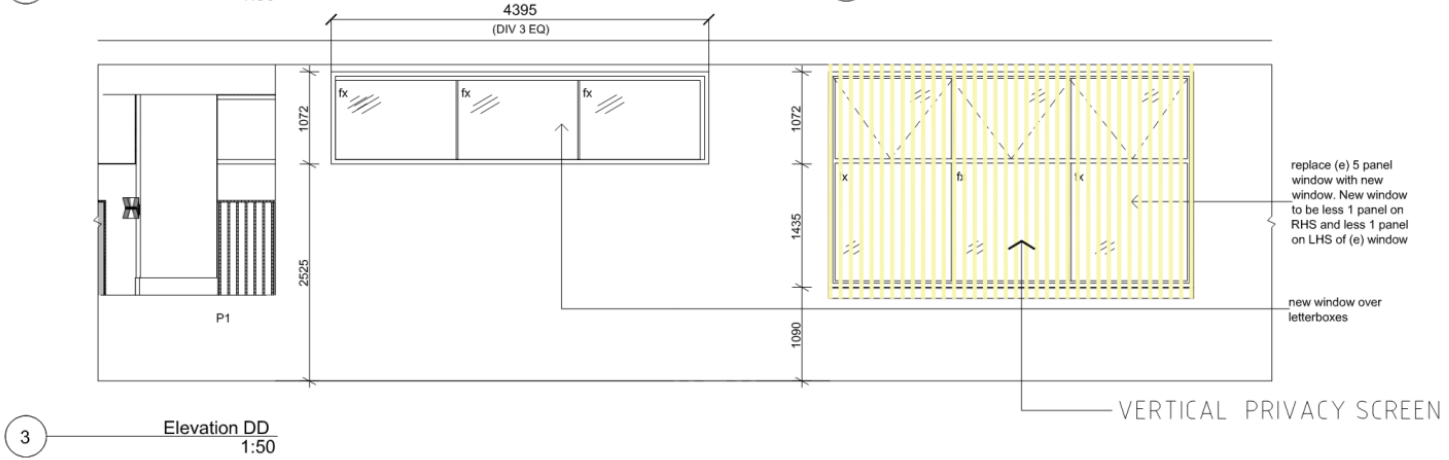
JOB No. 20005
DWG. No. CD-40-
DATE AUG 2021
SCALE 1:50 @A3
DRAWN ip



1 Elevation AA
1:50



2 Elevation BB
1:50



3 Elevation DD
1:50



GENERAL NOTES
1. CONTRACTORS MUST VERIFY ALL DIMENSIONS ON SITE PRIOR TO THE COMMENCEMENT OF ANY WORK OR THE PREPARATION OF SHOP DRAWINGS.
2. FIGURED DIMENSIONS TO BE USED IN PREFERENCE TO SCALED DIMENSIONS.
3. USE OF THESE DIMENSIONS:
The design and details shown on these drawings are applicable to this project only and may not be reproduced in whole or in part for any other project or purpose without the written permission of Woodhouse & Danks Pty. Ltd. with whom copyright resides.

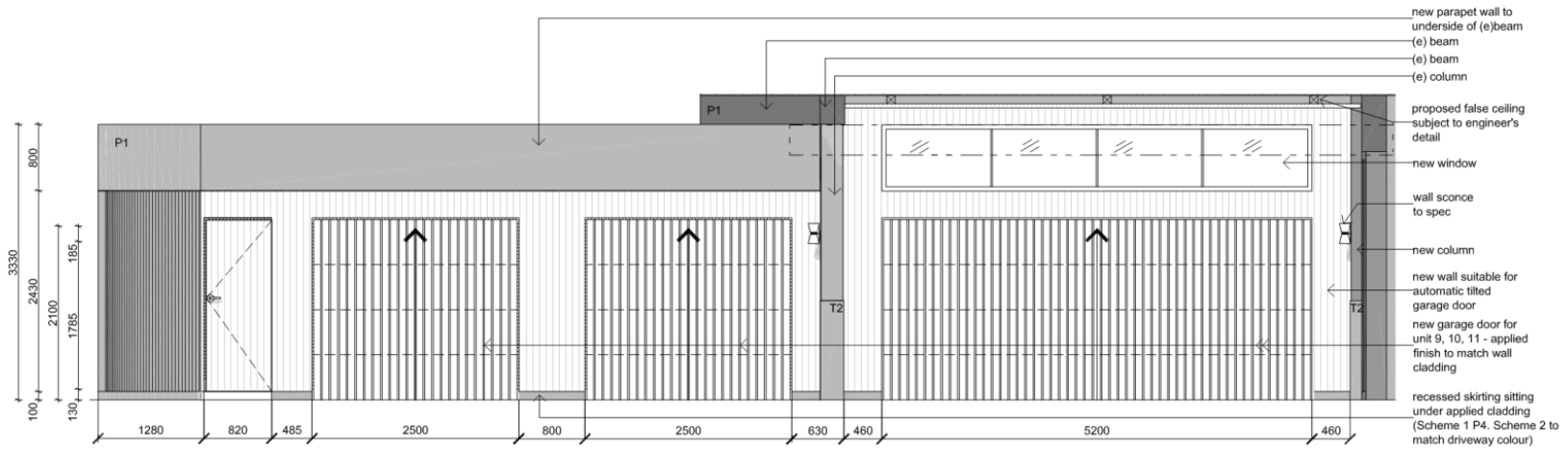
No.	DATE	REVISION OR ISSUE	DWN.	CHK.	No.	DATE	REVISION OR ISSUE	DWN.	CHK.
	09.08.21	ISSUE							

Proposed Alteration
69 Evans Street, Freshwater
NSW

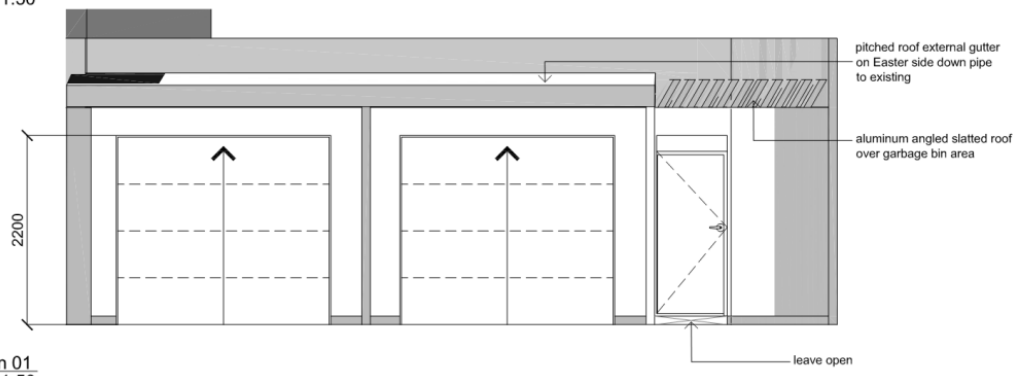
ELEVATION AA, BB, DD

'Nominated Architect Stephen Fayle'
DESIGN SUPPLIED BY: KH DESIGN GROUP

WOODHOUSE & DANKS ARCHITECTS
Suite 207 Level 2, 20 Date Street, Brookvale NSW 2100
E: admin@woodhouseanddanks.com.au
T: (02) 9539 8810
D: (02) 9539 8810
F: (02) 9539 8810
20005
CD-44 a
SCALE: 1:50 @A3
DATE: DEC 2021
DRAWN: sp



1 Elevation CC
1:50



2 Section 01
1:50



GENERAL NOTES
 1. CONTRACTORS MUST VERIFY ALL DIMENSIONS ON SITE PRIOR TO THE COMMENCEMENT OF ANY WORK OR THE PREPARATION OF SHOP DRAWINGS.
 2. FIGURED DIMENSIONS TO BE USED IN PREFERENCE TO SCALED DIMENSIONS.
 USE OF DIMENSIONS:
 The design and details shown on these drawings are applicable to this project only and may not be reproduced in whole or in part for use on any other project or occasion without the written permission of Woodhouse & Danks Pty. Ltd. with whom copyright resides.

No.	DATE	REVISION OR ISSUE	DWN.	CHK.	No.	DATE	REVISION OR ISSUE	DWN.	CHK.

09.08.21 ISSUE

Proposed Alteration
 69 Evans Street, Freshwater
 NSW
 ELEVATION CC, SECTION 01

'Nominated Architect Stephen Fayle'
 DESIGN SUPPLIED BY: KH DESIGN GROUP

WOODHOUSE & DANKS ARCHITECTS
 Suite 207 Level 2, 20 Date Street, Brookvale NSW 2100
 T: (02) 9539 8810
 E: admin@woodhousedanks.com.au

JOB No. 20005
 DWG. No. CD-45 - REV
 DATE: AUG 2021
 SCALE: 1:50 @A3
 DRAWN: ip



TOWN PLANNING REPORT

69 Evans Street Freshwater

Clause 4.6 variation Report

1

Building above 8.5m

Introduction

Clause 4.6 of WLEP 2011 provides Council with the flexibility to vary development standards contained within gazetted environmental planning instruments, when it can be demonstrated that compliance with the development standard, in the particular circumstances of an individual development application, is unreasonable or unnecessary.

Although there are minor differences in the approach applied by State Environmental Planning Policy (SEPP1) and that of Clause 4.6, the tests to be applied to a variation under Clause 4.6, are similar to those articulated in relation to SEPP 1.

However Clause 4.6 has the added requirement which is detailed in Clause 4.6(3), which states as follows:

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.*

Having regard to the above, and dealing first with issue of whether the standard is *unreasonable and unnecessary*, it is noted that the tests applied to a SEPP 1 objection were set out by Lloyd J in *Winton Property Group Limited v North Sydney Council* [2001] NSWLEC 46, where his Honour set out five questions that need to be addressed.

The first is, "*Is the planning control a development standard?*"

The second raises the underlying objectives or purposes of the standard.

The third and fourth deal with the questions of consistency with the aims of the policy and the objects in 5(a)(i) and (ii) of the Act and whether or not compliance is unreasonable or unnecessary.

According to Lloyd it conventionally being the fact that if application of the standard is held to be unreasonable or unnecessary in the circumstances of the case, that the objection is likely to be well-founded (thus satisfying the fifth Winton test).

The following assessment has been undertaken having regard to this judgement, and identifies the applicable planning instruments, zoning and applicable standard applying to the subject land, and considers the implications of the variation to the height of the proposed dormers sought, having regard to the objectives of the zoning and standard, as well as the relevant objectives of the Environmental Planning and Assessment Act.

2

This assessment concludes that compliance with the applicable standard, having regard to the particular circumstances of this application, would in this instance, be unreasonable and unnecessary, and therefore should be approved.

Applicable environmental planning instrument

Warringah Local Environmental Plan 2011

Identification of the development standard to which the SEPP 1 objection applies

.**Clause 4.4** of WLEP 2011 refers to the maximum height standard, and the Height control Map, which provides height controls for the locality.

In accordance with the Height control Map, the maximum height of building permitted on the subject site is 8.5 metres.

Variation sought

The height of the proposed privacy screens when installed will be located above the allowable 8.5m. The existing building having a Level 11 soffit RL of 41.26 or a 29.2m building height. This building height is 20.70m above the allowable 8.5m for this zone.

A variation in accordance with Clause 4.6 of MLEP is therefore sought to permit the height of the privacy screens under the existing usage rights. This being that at time of the building being constructed, the building height was allowable.

Objectives of the applicable zone

The subject site is zoned **R2 Low Density Residential** in accordance with WLEP 2013. The relevant **Objectives** of this zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

COMMENT

The building was built when a multi residential building was permitted on the site and as such the variation is sort as an existing building rights. The privacy screens are located within the existing balcony foot print.

Objectives of applicable standard

- (1) *The objectives of this clause are as follows—*
- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
 - (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
 - (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

3

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

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).

(2A) If the [Height of Buildings Map](#) specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.

COMMENT

It is considered that the variation to be addressed under the existing building rights is consistent with the standard in relation to the privacy screens. It is considered that the variations to the applicable standard in relation to the proposed privacy screens satisfies the objectives of this Clause, as the bulk and scale of the existing apartment building will not change as a result of the privacy screens being installed, enhancing the architectural appearance of the building.

As discussed previously in this report, there will be no adverse environmental impacts in relation to the use or enjoyment of adjoining land and the public domain.

Further to the above, and as also indicated previously in the report, the character of the locality will not be adversely impacted by the proposed privacy screen design, and there are no existing vegetation, topography, public views and natural features of land, including the foreshore, which would limit the height of the privacy screen, as proposed in this application.

Similarly the compatibility of the building form to the size of the land will continue to be maintained.

The potential impacts on solar access, privacy, and overshadowing have all been addressed previously in this report, and it can be concluded that the variation of the height of the new privacy screen in this instance will have no adverse impacts on adjoining properties.

It can therefore be concluded that the variation in the height of the privacy screen, continues to acknowledge the environmental constraints of the site, and will not inhibit the contextual relationship between the subject land and that of adjoining residential development. Further more adjoining properties existing and in the future will benefit from the screens visually screening services and reducing privacy impacts.

In terms of the relevant objectives of the Environmental Planning and Assessment Act, it is considered that the variation in the height standard to accommodate the privacy screen, will not have any adverse impact on the environmental constraints of the site, as addressed in this planning report, and in fact will contribute towards maintaining and enhancing the residential character of the locality.

It can therefore be concluded that the variation to the height standard, is consistent with the relevant objects of the Act, which are as follows;

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

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

Further to the above, Preston J has expressed the view that there are five different ways in which an objection may be well founded. These are addressed as follows:

4

1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;

Comment

As indicated above, it is considered that the objectives of the standard are achieved notwithstanding the variation to height standard.

2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

Comment

Not applicable. Objectives of the standard have been identified in WLEP 2011, and have been addressed above.

3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Comment

Not applicable

4. the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

Comment

Not applicable

5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

Comment

Strict application of the standard is considered to be unreasonable and unnecessary in the current circumstance for the following reasons:

- The proposed technical variation to the height standard in respect of the privacy screen, does not result in any unreasonable impacts on the amenity of adjoining residential properties in terms of overshadowing, privacy, loss of views or loss of daylight;
- The proposed variation continue to recognise the existing environmental constraints of the site and retain the contextual relationship with other buildings in this locality;

5

- The proposed variation does not result in any material impacts in terms of privacy, views, solar access, separation distances, light and ventilation on any adjoining development in the immediate vicinity of the proposal or surrounds;
- The proposal will facilitate the enhancement of the existing building form to create a building or enhanced architectural merit, consistent with the desired future strategic vision for this locality.

For these reasons it is considered that strict application of this standard is unreasonable and unnecessary having regard for the particular circumstances of this case.

Further to the above it is considered that the proposed variation does not raise any matter of significance in relation to State or regional planning, and it is not anticipated that the variation will undermine the standard itself and lead to any potential adverse precedent.

The reason for this conclusion is that the proposed variation is very site specific and related to a specialised use of the subject site, which is a very low intensity use.

In addition the technical variation to the height standard, will not change the contextual relationship currently experienced in relation to the existing dwelling on the site.

Finally it is considered that there does not appear to be any public benefit in maintaining the existing height standard, adopted by the planning instrument in this instance.

The public benefit is to be found in the provision of the development of the site for the alterations and additions to an existing dwelling, designed to enhance the general amenity of the locality, as well as the residents who will inhabit the proposed dwelling.

For the reasons referred to above it is considered that the variation to the maximum height standard as sought in this application, is reasonable and necessary, having regard to the circumstances of the case, and as such should be approved.

In relation to Clause 4.6(3) (b) however, it is noted, that the proposed development is consistent with the objectives of the standard, particularly those related to the bulk and scale of development, the density control, and the visual relationship between the new development and the existing character and landscape of the area.

It is noted in particular, that the streetscape is transitioning to a contemporary modernisation, the height and shape of the privacy screen will assist with the articulation of the building elevations.

Accordingly it can also be concluded that the proposed development satisfies the requirements of Clause 4.6 of Warringah Local Environmental Plan under the existing usage rights.