



northern  
beaches  
council

# AGENDA

## **DEVELOPMENT DETERMINATION PANEL MEETING**

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

**WEDNESDAY 22 MAY 2024**

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

**Agenda for a Meeting of the Development Determination Panel  
to be held on Wednesday 22 May 2024  
via teleconference  
Commencing at 10:00 AM**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
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## **ACKNOWLEDGEMENT OF COUNTRY**

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

### **1.0 APOLOGIES & DECLARATIONS OF INTEREST**

Nil

### **2.0 MINUTES OF PREVIOUS MEETING**

#### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD ON 8 MAY 2024**

##### **RECOMMENDATION**

That the Panel note that the minutes of the Development Determination Panel held on 8 May 2024 were approved by all Panel Members and have been posted on Council's website.

### 3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

**ITEM 3.1      DA2024/0265 - 29 CAROLYN AVENUE BEACON HILL -  
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**

**PURPOSE**

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

**RECOMMENDATION**

That 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.

THAT Council as the consent authority **approves** Development Consent to DA2024/0265 for alterations and additions to a dwelling house on land at Lot 112 DP 788265, 29 Carolyn Avenue BEACON HILL, subject to the conditions set out in the Assessment Report.

<b>Reporting manager</b>	Adam Richardson
<b>TRIM file ref</b>	2024/292879
<b>Attachments</b>	<a href="#">↓1 Assessment Report</a> <a href="#">↓2 Site Plan and Elevations</a> <a href="#">↓3 Clause 4.6</a>



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2024/0265
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<b>Responsible Officer:</b>	Megan Surtees
<b>Land to be developed (Address):</b>	Lot 112 DP 788265, 29 Carolyn Avenue BEACON HILL NSW 2100
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Robert Eric Allan
<b>Applicant:</b>	Eugene Du Plessis

<b>Application Lodged:</b>	21/03/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	28/03/2024 to 11/04/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 58.8%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 982,243.90
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### EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house.

The application is referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10% to Clause 4.3 Height of Buildings of the *Warringah Local Environmental Plan 2011* (WLEP 2011).

The maximum permitted building height under the WLEP 2011 is 8.5 metres. The proposed building height is 13.5 metres, resulting in a variation of 58.8%. In support of the variation is a detailed written Clause 4.6 variation request where compliance with the development standard is considered

unreasonable and unnecessary in the circumstances of this case. The variation arises and is support on the basis that the proposed third floor level of the dwelling is sited over previously excavated ground. The effect of this is a technical variation is that the built form is of an acceptable bulk and scale.

The proposal includes two (2) variations to the built form controls under the Warringah Development Control Plan (WDCP), these being: B1 Wall Height and B3 Side Boundary Envelope. A detailed discussion has been undertaken for D7 Views and D9 Building Bulk which further details the reasonableness of the proposal. In regards to these variations, the proposal does not result in any unreasonable environment and/or amenity impacts upon the subject site or adjoining properties, with the proposal achieving all relevant objectives of these built form controls.

The proposed development application was notified in accordance with the Northern Beaches Council Community Participation Plan (CPP) for fourteen (14) days. One (1) submission was received during this time which raised concern regarding view loss and the proposed maximum building height.

Based on a detailed assessment of the proposal against the relevant planning controls, it is considered that, on balance, the proposal is a suitable and acceptable development for the subject site for the reasons outlined in this report.

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

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

This development application seeks consent for alterations and additions to a residential dwelling, comprising the following works:

##### **Ground Floor RL119.68 (existing)**

- Entry gate
- Extend external western wall to meet the existing driveway
- Extend external eastern wall to align with the western wall extension
- New front window
- Internal lift to Second Floor
- Altered design to internal staircase

##### **First Floor RL123.52 (existing)**

- Minor demolition works to remove a partial wall and door to allow lift access to the existing hall
- New doors to the existing balcony along the northern elevation

##### **Second Floor RL126.54 (existing)**

- Demolition works to increase the floor area and to accommodate:
  - Open plan kitchen (with walk-in pantry), dining (with bar) and living area
  - Balcony along the northern elevation
  - Storage room with access off existing rear terrace
  - Laundry with water closet
  - Amended window schedule

**Third Floor RL129.64 (proposed)**

- Master bedroom suite with study/home office, comprising:
  - En-suite
  - Two (2) walk-in robes
  - Balcony

**ASSESSMENT INTRODUCTION**

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

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

**SUMMARY OF ASSESSMENT ISSUES**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Development Control Plan - B1 Wall Heights  
 Warringah Development Control Plan - B3 Side Boundary Envelope  
 Warringah Development Control Plan - D7 Views  
 Warringah Development Control Plan - D9 Building Bulk

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot 112 DP 788265 , 29 Carolyn Avenue BEACON HILL NSW 2100
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Carolyn Avenue, located at the end of a shared driveway with 19, 25 and 27 Carolyn Avenue.</p> <p>The site is irregular in shape with a frontage of approximately 59.18m along the northern boundary and a maximum depth of 41.455m. The site has a surveyed area of 657.0m<sup>2</sup>.</p>

	<p>The site is located within the R2 Low Density Residential zone within the <i>Warringah Local Environmental Plan 2011</i> (WLEP 2011) and accommodates a three storey residential dwelling within a landscaped setting.</p> <p>The site is accessed via a shared driveway from the cul-de-sac of Carolyn Avenue. The site has a northerly orientation and is located on a slope of approximately 9.12 metres (or 30.2%) from the rear south-eastern corner toward the most northern point of the existing concrete kerbline. Due to the dense vegetation in the northern portion of the site, the Boundary Identification Survey does not include this area to the north of the existing driveway.</p> <p>The site is not known to have any threatened species.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by residential developments of a similar bulk and scale, some with swimming pools, located within a landscaped setting.</p>
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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:

- **DA2022/1172.** This development application sought consent for alterations and additions to the existing dwelling. This application was withdrawn on 13 February 2023.

**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	There are no current draft environmental planning instruments.
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 Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 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 29</u> of the EP&amp;A Regulation 2021 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 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 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 Matters for Consideration	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

**EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

**BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

**NOTIFICATION & SUBMISSIONS RECEIVED**

The subject application has been publicly exhibited from 28/03/2024 to 11/04/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Glen Francis Coventry	16 Lanai Place BEACON HILL NSW 2100
Lisa Maree Murray	14 Lanai Place BEACON HILL NSW 2100

The following issues were raised in the submissions:

- View impact
- Maximum building height
- Privacy
- Not correctly notified
- Non-compliance to the built form

The above issues are addressed as follows:

- **View impact**

*The submission raised concern that the proposed alterations and additions will cause unreasonable impacts upon existing views obtained from 16 Lanai Place, Beacon Hill (being the property directly to the south) and 14 Lanai Place, Beacon Hill (the property to the south-west).*

Comment:

In accordance with *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140, a four-part test was undertaken as part of this assessment to ascertain the extent of view loss.

The assessment found that the proposal provides a reasonable and acceptable level of view sharing between properties.

This issue does **not** warrant reason for refusal of this application.

- **Maximum building height**

*The submissions raised concerns that the proposed development does not comply with the maximum building height, subsequently contributing to a degrading amenity impact upon the property to the south, being 16 Lanai Place, Beacon Hill.*

Comment:

The proposed development deviates from the prescribed maximum building height under Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP 2011). The application is accompanied by a Clause 4.6 written request to vary a development standard, which for the reasons detailed with the 4.6 assessment under this application, is considered to be acceptable.

The assessment found that the proposed maximum building height is acceptable, given the context of the subject site and the minimal environmental impacts arising from the proposed building height, despite the height breach.

This issue does **not** warrant reason for refusal of this application.

- **Privacy**

*The submission raised concern that the proposed top floor addition will cause unreasonable privacy impacts upon the occupants of 14 Lanai Place, Beacon Hill.*

Comment:

One (1) window is proposed along the southern elevation on the proposed third floor (top floor). This is a highlight window sited in the roof form with frosted glazing and has a sill height of 3.12 metres from the proposed finished floor level of the third floor. In this instance, this window will not cause unreasonable privacy impacts to adjoining properties.

This issue does **not** warrant reason for refusal of this application.

- **Not correctly notified**

*The submission raised concern that their property, being 14 Lanai Place Beacon Hill, was not notified, notwithstanding the fact this property does not immediately adjoin the subject site.*

Comment:

Council's Community Participation Plan (CPP) stipulates that 'Northern Beaches will inform the community of the exhibition of development in the following three ways:

1. *Notified development: sending exhibition letters to adjoining property owners and occupiers across a street or road from the subject notice and the placement of a site sign on the main frontage of the development site.*

2. *Advertised development: sending exhibition letters to adjoining property owners and occupiers across a street or road from the subject site (refer to Figure 2) plus the placement of a site notice on the main frontage of the development site and the placement of a notice on Council's website.*

3. *Electronic Alerts: In addition to the above, electronic alerts will be sent to any person or group that has registered to receive information on the exhibition of development applications.*

The proposed development is not required to be advertised. As such, Council notified the proposed development in accordance with point 1. above.

This issue does **not** warrant reason for refusal of this application.

- **Non-compliance to the built form**

*The submission raised concern that the proposed development appears to result in numerous built form non-compliances that unreasonably impact upon surrounding neighbours. The submission further details disappointment that the application was permitted to be submitted to*



*Council for consideration of a fourth level that impacts upon privacy, views and ocean breezes upon surrounding neighbours.*

Comment:

Where the proposed development does not achieve the numeric requirement of a specific control of the WDCP or a Clause within the WLEP 2011, it has been addressed in detail within the assessment report. The assessment of this application found that, notwithstanding the numeric non-compliances, the proposed development can achieve the outcomes of the relevant controls and does not result in any unreasonable environmental or amenity impacts upon adjoining and nearby properties.

With regards to the objector’s disappointment that the application was allowed to be submitted to Council, any Development Application can be submitted for assessment. It is during the assessment process that a Development Application is found to result in either an acceptable or unacceptable planning outcome.

These issues do **not** warrant reason for refusal of this application.

**REFERRALS**

Internal Referral Body	Comments
Landscape Officer	<p>The application is for proposed alterations and additions to an existing dwelling. The property contains existing landscape features including prescribed trees and natural rock outcrops, and these are preserved as part of the proposed development.</p> <p>A Arboricultural Impact Assessment (AIA) is submitted providing tree sensitive construction recommendations for works within the tree protection zone of tree 1 - Sydney Blue Gum, located in proximity to proposed development. An encroachment of 10.8% is calculated in the AIA report requiring tree sensitive excavation and construction as well as supervision by a Project Arborist, as recommended in the AIA report. Other trees within the property as shown on the Survey are retained, and Landscape Referral raise no concerns.</p>
NECC (Bushland and Biodiversity)	<p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> <li>• Warringah DCP Clause E2 - Prescribed Vegetation</li> <li>• Warringah DCP Clause E6 - Retaining unique environmental features</li> </ul> <p>The proposal has been submitted with an arboricultural impact assessment that has concluded that all trees on site can be retained if appropriate tree protection measures are in place. Additionally, proposed works are to take place in previously disturbed areas of the</p>

Internal Referral Body	Comments
	<p>site and are unlikely to impact upon native flora and fauna.</p> <p>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	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 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 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 (Sustainable Buildings) 2022**

A BASIX certificate has been submitted with the application (see Certificate No. A1739258, dated 11 March 2024).

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

**SEPP (Transport and Infrastructure) 2021**

Ausgrid

Section 2.48 of Chapter 2 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.

**SEPP (Resilience and Hazards) 2021**

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

**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	13.5m	58.8%	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**

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 Height of buildings

Requirement: 8.5 metres

Proposed: 13.5 metres

Percentage of variation: 58.8%

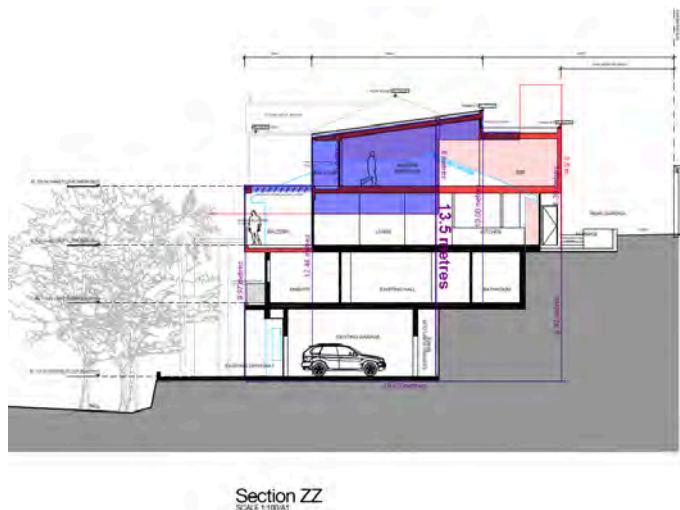


Figure 1. Extraction from master set plans, drawing no. DA.10, Issue E, Section ZZ, dated 11 March 2024 - extent of building height breach indicated in purple.

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is/is not accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the WLEP 2011 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

- (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.*

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

- (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 is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

*(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- Steep topography of the land.
- Existing excavation of the garage level and the location of the upper-level sited over the existing excavated garage level.

*(b) 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.'*

The Clause 4.6 Request argues, in part:

- *'The existing dwelling is positioned on the north face of a steep slope which has a gradient of approximately 30%. There is a level difference of approximately 7m within the footprint of the dwelling house. The topography has a significant influence on the built form of the subject site and the adjacent properties to the east...*
- *Significant excavation of the site has occurred to accommodate the existing dwelling house.*
- *The existing dwelling house was approved and constructed in 1996/7, with a completion certificate issued in 1997. This means the house was approved under Warringah LEP 1985. At the time an 11m building height development standard was applicable. The existing dwelling house does not comply with the current building height development standard and virtually*

- any changes to it will trigger the need for a clause 4.6 exception (as required by Council). This circumstance can't be avoided by any proposed development.
- *It can be demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances because it is consistent with the objectives of the Clause 4.3 height of buildings of LEP 2011. The objectives of the standard are repeated below along with the way in which the proposal satisfies these objectives:*
    - **The subject site and those within the row adjoining to the east, are not typical allotments in the context of the R2 low density zone.** They are positioned on very steep land on battle axe allotments. The proposed building form reflects the topography of the land. The proposed building form will be compatible with the established pattern of building height, form, and scale of nearby dwelling houses at numbers 23, 25, and 27 Carolyn Avenue (the row of houses to the east shown in figure 4) which are all multi-storey dwelling houses. The proposed upper-level addition, whilst exceeding the building height, is lower than the height of the row of buildings to the east, noting the proposed roof ridge is RL 133.63 whereas the roof ridge of the adjacent dwelling house to the east is RL 134.5. The proposed building height does not result a significant increase in the perceivable bulk or scale of the dwelling house. The proposed building scale and form is compatible with the local dwelling house character.
    - **The front setback to the proposed upper-level addition is increased compared to that of the existing dwelling house on the site and nearby dwelling houses at 23, 25, and 27 Carolyn Avenue.** It aids the proposed upper-level addition being visually recessive. The existing dwelling house's wall heights are established and relatively modest increases are proposed that are compatible with the adjacent dwellings to the east. The proposed upper-level extension provides increased side boundary setbacks, increased front boundary setback, a reduced floor area / floor plate compared to levels one and two of the existing dwelling house, a compliant rear boundary setback, [and a] compliant site coverage/landscaped area and no additional excavation. The local topography changes to the west and south of the site. The dwelling houses to the west and the south are positioned on different topographical levels. From these areas the proposed upper-level addition will present as a recessive building mass, compatible with the established built form. The property has a small visual catchment due to its cul-de-sac location and long (41m) battleaxe driveway frontage. It will not present inappropriately to the streetscape or to adjoining properties.
    - **Consideration has been given to the Tenacity view sharing planning principle in developing the design, amended from that proposed in DA2022/1172.** The amended design increases the side setbacks and reduces the width of the proposed upper floor level, in turn, reducing the view obstruction from the rear neighbouring property at 16 Lanai Place. [As indicated in the figures below], the view comprises tree canopies and roofs of dwelling houses in the foreground; bushland and water views in the middle and long distance (these are the more valued aspects of the view). The addition will obstruct some of the roofs and urban tree canopy within the foreground of the view (figure 6). The large area of more valued natural features in the middle and long distance will be retained. Most of the view obstruction would arise from building elements that are compliant with the planning controls, being the southern section of the proposed new storey (level 4) where it meets the natural / existing ground level at the rear of the site. The amended design demonstrates that it is a skilled design, more considered than the previous DA. In summary, the amended design: has considered the potential view impacts; has minimised and reduced the impacts of the previous design in DA 2022/1172; satisfies the view sharing principles established by the Tenacity planning principle. For these reasons, the proposed building height exception minimises its disruption of views.
    - **The proposed development will minimise the loss of privacy noting the following aspects of the proposal:** appropriate side building setbacks are provided by the proposed additions, noting the significant 3m (east) and 4.3m (west) side setbacks proposed to the

upper-level addition; side boundary facing window openings are limited and appropriate in terms of their function (the rooms that they serve), their location, sill height, and extent; privacy screens are proposed to the balconies and terraces, on each side; no upper floor balconies or terraces of a size that would allow for the congregation of people are proposed that are not appropriately screened or adjacent to sensitive living areas within the neighbouring properties. For these reasons, the proposed building height exception minimises its loss of privacy.

- **Shadow diagrams accompany and support the proposal.** They demonstrate that compliance with the DCP is achieved.

- **The proposed development will minimise any adverse impact on the scenic quality of Warringah's coastal and bush environments, noting:** the property has a small visual catchment due to its cul-de-sac location and battle-axe driveway frontage (it is obscured from the street by the existing development due to its location at the end of a 41 metre driveway); it will not present inappropriately to the streetscape; the proposed development is not adjacent to coastal land; the existing dwelling house's building heights are established, and only modest increases are proposed; the proposed upper-level will present a recessive storey and a built form that is characteristic of the height and scale of dwelling houses in the local area; the building design modulates its building form. It steps in response to the slope of the land, with the upper-level inset from the front and side boundaries presenting a recessive building level; when viewed from bushland to the north, the bushland is located at medium to long distances from the site. The proposed upper-level addition will be viewed within the context of the established development to the east at numbers 23, 25, and 27 Carolyn Avenue. It will also be viewed within the hillside context of the development within the local area. The proposed upper-level addition is compatible with the height, scale and mass of the row of buildings to the east. It will therefore have an appropriate and compatible impact on the scenic quality of the bushland environment.

- **The proposed development will manage its visual impact when viewed from public places such as parks and reserves, roads, and community facilities, noting:** the property has a small visual catchment due to its cul-de-sac location and battle-axe driveway frontage; it will not present inappropriately to the streetscape or to adjoining properties; the proposed upper-level extension will not be visible from parks or community facilities [and will] not be visible from the road due to the site / building's battle-axe location.

- **In accordance with 4.6 (3)(b) there are sufficient environmental planning grounds to justify contravening the development standard given that:** These planning grounds include:

- **lesser impact on views than a complying building envelope...**the proposed building envelope has a better view sharing outcome than a compliant building envelope noting the increased side setbacks proposed and the lower than maximum building height proposed above the rear levels of the property. The following characteristics of the proposed built form at the rear of the proposed development are noted in this regard: the southern extent proposed upper floor addition is lower than the 8.5 metres established by the development standard. A building of 8.5 metres would have greater impact on the views enjoyed from properties to the south; increased / compliant side setbacks; compliant wall height; compliant side boundary envelope.

- **steep slope and the existing dwelling house levels.** [The excerpt of Council's contour map at Figure 9 illustrates] the steep slope of the land in the local area which affects numbers 23, 25, 27 and 29 Carolyn Avenue. It shows there is an 18m fall between the rear (southern) and front (northern) boundaries of the site. The steep slope of the land and the existing dwelling house levels are established. There is a significant and deep excavation (upto approx. 5 - 7m). Strict compliance with the building height standard is not achievable. Figures 11 to 13 assist in illustrating the significant excavation that has occurred to accommodate the existing dwelling house. Much of the existing building height (mass, GFA, bulk) is located below the interpolated natural ground levels. Therefore, it does not contribute to

adverse amenity impacts or incompatibility with neighbouring dwelling houses (to the east).

- **improved internal amenity.** The existing dwelling house offers sub-optimal amenity to various habitable rooms along the southern and eastern sides of the first-floor level of the building. The existing habitable rooms to the south and east receive no direct sunlight and rely on limited airflow from

the excavation void to the south and east to supply natural ventilation. The proposed development will provide improved amenity to the existing dwelling by enabling these rooms to be repurposed. The DA will also include significant improvements to the existing dwelling house's design aesthetic.

- **existing non-compliance.** The applicant advises that the existing dwelling house was approved and constructed in 1996/7, with a completion certificate issued in 1997. This means the house was approved under Warringah LEP 1985 which had an 11m building height development standard

applicable. The existing dwelling house does not comply with the current building height development standard and virtually any changes to it will trigger the need for a clause 4.6 exception. This circumstance can't be avoided; it establishes the existing character of the built form on the subject site which any proposed development must be reconciled with.

Furthermore, such an outcome is appropriate noting that the development benefits from enforceable development consent and an existing approval right which may continue, as provided under section 4.68 of the Environmental Planning & Assessment Act.

- **distortion of the maximum building height plane.** The prior excavation of the land distorts the maximum building height plane applicable to the

site. It is clear from the various accompanying images, survey, and architectural plans that the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. To this end, the proposed building height is compatible with the building heights of the adjacent dwelling houses at 23, 25, and 27 Carolyn Avenue.

- **Objectives of the Act.**

- Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the proposal is consistent with the following objectives at under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

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

(g) to promote good design and amenity of the built environment, through consistent streetscape alignment and increased landscaping at the street edge.

- In response to (c), the proposal will facilitate the orderly and economic use and development of the land, on zoned residential land, in a manner that satisfies the applicable planning considerations because it will facilitate, renewal of the dwelling house, improved housing in a highly desirable location, designed to meet contemporary living needs, and meet building sustainability (BASIX) requirements. The existing dwelling house offers sub-optimal amenity to various habitable rooms along the southern and eastern sides of the first-floor level of the building. The existing habitable rooms to the south and east receive no direct sunlight and rely on limited airflow from the excavation void to the south and east to supply natural ventilation.

- In response to (g), the proposal results in a residential development that will promote good design and amenity of the built environment. The established built form character is maintained for the land through an upper-level addition that is compatible with the height and form of adjoining developments, with the proposed improvements positively contributing to character of the area. For these reasons there are sufficient environmental planning grounds to justify the exception to the development standard.'

It is considered the Applicant's written request to vary development standard Clause 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011 (WLEP 2011) is acceptable given the



proposed resultant built form will be commensurate with surrounding and nearby residential developments, the extent of previous excavation on the site which has altered the existing ground level. Thus, establishing site constraints that make strict compliance with this requirement difficult. The site experiences a substantial fall from the southern rear boundary toward the northern front boundary, with the building footprint being sited on a slope exceeding 40%. As indicated in Figure 1 above, the extent of breach is sited to the proposed third floor addition. The existing dwelling has a maximum building height of 11.75 metres, which presents a variation of 38.2%. The difference of the existing height and proposed height is 2.1 metres.

Based on the existing excavation of the site, the maximum building height has been measured in accordance with *Merman Investments Pty Ltd Woollahra v Municipal Council* [2021] NSWLEC 1582, which is to the existing ground level. Due to the steep topography of the site, even from an extrapolated level, the proposal would not achieve compliance with the maximum height requirement of Clause 4.3 of the WLEP 2011. As such, this confirms that the existing site constraints makes compliance with Clause 4.3, challenging in that strict compliance with the development standard having regard to the sites characteristics would be such that the built form is disjointed and limited to approximately 1.5 level due to the abruptness of the ground level throughout the existing dwelling.

As is evidenced throughout this assessment report, the extent of non-compliance to Clause 4.3 does not cause any unreasonable environmental and amenity impacts upon adjoining properties, particularly noting that the proposed third floor addition does not cause any unreasonable view loss impacts upon the property to the rear, being 16 Lanai Place. Furthermore, the shadow diagrams that accompany this development application show compliance with the requirements stipulated within D6 Access to Sunlight. A detailed discussion of the proposal against the requirements and outcomes of D9 Building Bulk was undertaken within this assessment report and, due to the articulation of the third floor addition and it's compliant front, side and rear setbacks, allows for an appropriate building bulk that is reasonable in the context of the site, and is commensurate with the other dwellings along the shared driveway (being 23, 25 and 27 Carolyn Avenue).

As detailed elsewhere in this report, the subject site is unique in that it is sited at the end of a private shared driveway with 23, 25 and 27 Carolyn Avenue. The subject site, and adjoining land to the west and north, are sited on a steep topography surrounded by dense vegetation and large canopy trees. When viewed from the properties to the south, along Lanai Place, the proposed works will present as a second storey that is visually commensurate with the adjoining and nearby properties along the shared driveway, which is not unreasonable for the context of the site. The site, due to the dense vegetation and steep topography, cannot be easily viewed from properties to the north. And, when viewed from the shared driveway, the proposed development will be consistent with the other dwellings along the shared driveway. In this instance, and notwithstanding the extent of non-compliance to this control, the proposed development is acceptable.

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, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

**Public Interest:**

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

**Conclusion:**

Council is satisfied as to the matters set out in Clause 4.6 of the WLEP 2011.

It is considered with regard to the above that, having regard to the particular circumstances of this proposed development, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

**Warringah Development Control Plan**

Built Form Controls

<b>Built Form Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
B1 Wall height	7.2m	<b>Eastern Elevation</b> 5.2m - 10.0m	38.8%	No
		<b>Western Elevation</b> 6.2m - 12.9m	79.16%	No
B3 Side Boundary Envelope	<b>Eastern Elevation</b> 4m	Encroachment	N/A	No
	<b>Western Elevation</b> 4m	Encroachment	N/A	No
B5 Side Boundary Setbacks	<b>Eastern Boundary</b> 0.9m	<b>Ground Floor</b> 1.5m	N/A	Yes
		<b>Second Floor</b> 1.4m - 1.5m	N/A	Yes
		<b>Third Floor</b> 2.3m - 3.0m	N/A	Yes
	<b>Western Boundary</b> 0.9m	<b>Ground Floor</b> 2.2m	N/A	Yes
		<b>Second Floor</b> 2.2m - 2.3m	N/A	Yes
		<b>Third Floor</b> 2.2m - 4.4m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	<b>Ground Floor</b> 18.85m - 19.13m	N/A	Yes
		<b>First Floor</b> 19.9m	N/A	Yes
		<b>Second Floor</b> 18.85m - 19.0m	N/A	Yes
		<b>Third Floor</b> 18.8m - 22.4m	N/A	Yes
B9 Rear Boundary Setbacks	6m	<b>Second Floor</b> 6.0m - 7.8m	N/A	Yes
		<b>Third Floor</b> 6.0m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (262.8m <sup>2</sup> )	50% (328.8m <sup>2</sup> )	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	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C4 Stormwater	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
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 control requires development to result in wall heights no greater than 7.2 metres. Due to the slope of the land, the proposed development extends beyond the maximum wall height along both the eastern and western elevations, as indicated in the figures below.

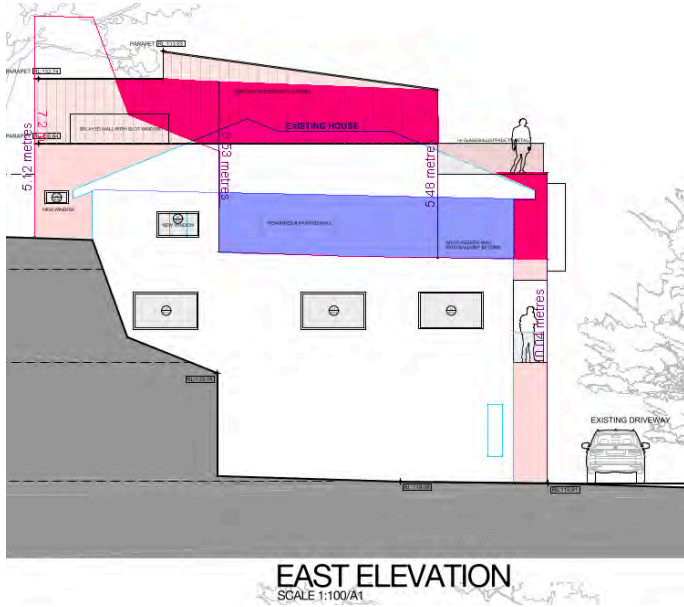


Figure 2. Proposed eastern elevation wall height breach. Extent of breach indicated in pink shading (existing approximate breach indicated by purple shading).

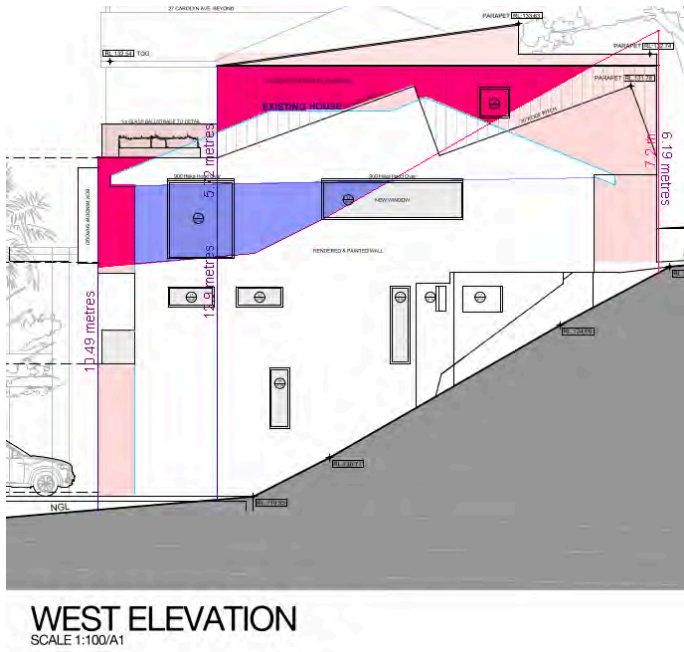


Figure 3. Proposed western elevation wall height breach. Extent of breach indicated by pink shading (existing approximate breach indicated by purple shading).

An exception may be permitted which allows the requirements of this control to be varied on sites with slopes greater than 20% below the building footprint, provided that the building does not exceed 8.5 metres, is designed and located to minimise the bulk and scale and has a minimal visual impact when viewed from the downslope sides of the land. As the proposed maximum height exceeds 8.5 metres, the exception cannot be applied, notwithstanding the fact the building footprint is sited on a slope of

47.8% along the eastern elevation and 42.4% along the western elevation. As can be seen in Figures 2 and 3 above, the majority of the wall height breach is attributed to the existing dwellings' mass.

Notwithstanding, a merit consideration of the proposal against the outcomes of this control has been undertaken below.

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 subject site is unique in that it is sited at the end of a private shared driveway with 23, 25 and 27 Carolyn Avenue. The subject site, and adjoining land to the west and north, are sited on a steep topography surrounded by dense vegetation and large canopy trees. When viewed from the properties to the south, along Lanai Place, the proposed works will present as a second storey that is visually commensurate with the adjoining and nearby properties along the shared driveway, which is not unreasonable for the context of the site. The site, due to the dense vegetation and steep topography, cannot be easily viewed from properties to the north. When viewed from the shared driveway, the proposed development will be visually consistent with the other dwellings along the shared driveway. In this instance, and notwithstanding the extent of non-compliance to this control, the proposed development will not become a visually dominant structure when viewed from adjoining properties, streets, waterways or land zoned for public recreation.

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

Comment:

The subject site has multiple canopy trees, none sited in the rear of the property however, with the majority being sited in the northern portion of the site, which is located downslope from the existing dwelling. The adjoining property to the west, being 20 Cousins Road, Beacon Hill is an irregularly shaped allotment, with dense vegetation and canopy trees located in the southern portion of the site, which is directly adjacent to the subject site. In this instance, the proposed development will be sited both above and below the canopy tree level due to the steep topography of the land, which in the context of the site is considered reasonable.

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

Comment:

A detailed view sharing assessment has been undertaken within this assessment report under section D7 Views. This assessment found that the proposal provides for reasonable view

sharing, notwithstanding the numeric non-compliance to this control.

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

Comment:

The extent of non-compliance, while substantial, is a direct result of the steep topography of the land. The proposed third floor addition provides significant side setback distances, as well as compliant front and rear setback distances. The extent of non-compliance to this control does not cause unreasonable impacts upon views, or create an unreasonably excessive or obtrusive built form when viewed from adjoining and nearby properties. The proposed built form will be consistent with the other dwellings along the shared driveway, noting that the maximum ridgeline of the proposal (RL133.63) is less than that of 27 Carolyn Avenue (the property to the east), which is RL134.50. In this instance, the impact of the proposal against adjoining and nearby properties is considered to be reasonable, given the existing site constraints.

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

Comment:

The building footprint is sited on a steep topography which has already experienced extensive excavation to accommodate the existing dwelling. The proposed development does not seek further excavation or fill on the site. In this circumstance, the proposal appropriately responds to the topography of the site.

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

Comment:

The proposed development seeks to alter the roof form to a more contemporary design with a parapet, thus creating visual interest in the built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **B3 Side Boundary Envelope**

Description of non-compliance

This control requires development to be sited within a side boundary envelope, which is determined by projecting planes at 45 degrees from a height of 4.0 metres above the natural ground level along the eastern and western side elevations.

The proposed development extends beyond the prescribed side boundary envelopes along both the eastern and western elevations, as indicated in the figures below.



Figure 4. Eastern side boundary envelope breach (extent indicated by green shading, existing approximate breach indicated by blue shading).



Figure 5. Western side boundary envelope breach (indicated by green shading, existing approximate breach indicated by blue shading).

A merit consideration of the proposal against the outcomes of this control is undertaken below.

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 subject site is unique in that it is sited at the end of a private shared driveway with 23, 25 and 27 Carolyn Avenue. The subject site, and adjoining land to the west and north, are sited on a steep topography surrounded by dense vegetation and large canopy trees. When viewed from the properties to the south, along Lanai Place, the proposed works will presents as a second storey that is visually commensurate with the adjoining and nearby properties along the shared driveway, which is not unreasonable for the context of the site. The site, due to the dense vegetation and steep topography, cannot be easily viewed from properties to the north. And, when viewed from the shared driveway, the proposed development will be visually commensurate with the other dwellings along the shared driveway. In this instance, and notwithstanding the extent of non-compliance to this control, the proposed development will not become unreasonably visually dominant by virtue of its height and bulk.

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

Comment:

Shadow diagrams have been provided with this application and the extent of non-compliance to his control does not give rise to any unreasonable overshadowing to the main private open space of 27 Carolyn Avenue to the east and 16 Lanai Place to the south. Appropriate measures have been included along the eastern elevation (such as privacy screens and highlight windows) to mitigate unreasonable privacy impacts upon 27 Carolyn Avenue. Furthermore, the proposed additional third storey is setback 2.3 metres to 3.0 metres from the eastern side boundary. In this instance, there is adequate privacy by providing spatial separation between buildings.

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

Comment:

The building footprint is sited on a steep topography which has already experienced extensive excavation to accommodate the existing dwelling. The proposed development does not seek further excavation or fill on the site. In this circumstance, the proposal appropriately responds to the topography of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

**D7 Views**

Merit consideration

Two (2) submissions were received from properties to the rear of the subject site, being 16 Lanai Place and 14 Lanai Place, Beacon Hill. 16 Lanai Place is located immediately to the south, and 14 Lanai



Place is sited to the south-west. 14 Lanai Place does not share a boundary with the subject site.

At the time of lodging this development application, height poles had been erected.

Site inspections were undertaken at 14 Lanai Place and 16 Lanai Place, both with the owners present.

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

- *To allow for the reasonable sharing of views.*

Comment:

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

**1. Nature of the views affected**

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

Comment to Principle 1:

**16 Lanai Place, Beacon Hill**

16 Lanai Place currently enjoys distant partial ocean views, partial view of Narrabeen Lagoon and expansive district views, however the district views are obscured by surrounding built form and natural vegetation within the immediate vicinity of the subject site.

**14 Lanai Place, Beacon Hill**

14 Lanai Place currently enjoys distant partial ocean views and expansive district views. These views are partially obscured by surrounding built form and natural vegetation within the immediate vicinity of the subject site.

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

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

Comment to Principle 2:

**16 Lanai Place, Beacon Hill**

The views, as detailed above, are obtained from the ground floor and lower ground floor levels of 16 Lanai Place in both standing and seated positions, across the shared rear boundary, as evidenced in the figures below. Red lines have been included for clarity of the locations of the existing height poles on the subject dwelling.



*Figure 6. Standing in the kitchen on the first floor level, facing north, across the rear boundary.*



*Figure 7. Standing in the dining area on the first floor level, facing north, over the rear boundary.*



*Figure 8. Sitting at the dining table on the first floor level, facing north, over the rear boundary.*



*Figure 9. Standing in the living area on the first floor level, facing north, over the rear boundary.*



*Figure 10. Sitting in the living area on the first floor level, facing north, over the rear boundary.*



*Figure 11. Standing on the first floor level balcony, located off the dining and living areas, facing north across the rear boundary.*



*Figure 12. Sitting on the first floor level balcony, facing north-east across the rear boundary.*



*Figure 13. Standing in a bedroom on the ground floor level, facing north across the rear boundary.*





*Figure 14. Standing on the ground floor level balcony, facing north across the rear boundary.*



*Figure 15. Sitting on the ground floor balcony, facing north over the rear boundary.*



Figure 16. Standing in the pool enclosure, facing north across the rear boundary.

**14 Lanai Place, Beacon Hill**

The views, as detailed above, are obtained from the kitchen and dining area on the ground floor level, and a landing/study space on the second floor level of 14 Lanai Place in both a standing and seated position. The views are also obtained from the deck on the ground floor level. The views are obtained over the side and rear boundaries of 14 Lanai Place. It is noted that the views obtained on the ground floor level of 14 Lanai Place are reliant upon the resident of 16 Lanai Place undertaking regular gardening to prune the palm trees on 16 Lanai Place.

The views obtained are evidenced in the figures below.



Figure 17. Ground floor level - standing in the kitchen, facing north, over the rear and side boundaries.



*Figure 18. Ground floor level - standing at the dining table, facing north-east, over the rear and side boundaries.*



*Figure 19. Ground floor level - sitting at the dining table, facing north-east, over the rear and side boundaries.*





*Figure 20. First floor level - standing on the landing / study area, facing north-east, over the rear and side boundaries.*



*Figure 21. Ground floor level - standing on the rear deck, facing north-east, over the rear and side boundaries.*



Figure 22. Ground floor level - sitting on the rear deck, facing northeast, over the rear and side boundaries.



Figure 23. Ground floor level - standing on the rear deck at the western edge, facing north-east, over the rear and side boundaries.

### 3. Extent of impact

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

Comment to Principle 3:

**16 Lanai Place, Beacon Hill**

As evidenced in figures 6 through to 12, the proposed development does not obstruct the views currently enjoyed by the occupants of 16 Lanai Place from the primary internal living areas of the dwelling which, as detailed above, are held more highly than views obtained from bedrooms.

Further, as evidenced in figures 13 through to 15, the views currently obtained from the ground floor level bedroom and balcony will be obstructed as a result of the proposed development. However, the ground floor balcony is not considered as the primary external living area as it does not directly flow on from the primary internal living areas. As detailed above, views obtained from bedrooms are not as significant as those obtained from living areas. The obstruction of views from the ground floor level are, therefore, considered reasonable.

Based on the fact the views are obtained from the main living areas of the dwelling, the extent of view loss is considered **minor**.

**14 Lanai Place, Beacon Hill**

The extent of view loss occurs on both the ground floor and first floor levels. On the ground floor level, views are obtained from the kitchen, dining area, and the rear back deck. On the first floor level, views are obtained from the landing and study space. The views on the ground floor level are more susceptible to obstruction from surrounding built form and natural vegetation, as is evidenced in Figures 17 – 19, and 21 – 23.

As detailed above, views from living areas (including kitchens) are valued more highly than those obtained from bedrooms or services areas. However, as detailed in Principle 2, the retention of sitting views and views obtained across side boundaries are ‘often unrealistic’. In this instance, the views on the ground floor level are obtained in a north and north-easterly direction from a standing position only – refer to figures 3 and 6 which show that views are **not** obtained from seated positions. The north-easterly views are obtained across the side boundary. The expectation to retain distant water views across a side boundary in a standing position is unrealistic, in this particular circumstance.

With consideration of the *whole* of the property, a reasonable level of view sharing is maintained. Based on the above, the extent of view loss to 14 Lanai Place, Beacon Hill is considered **minor**.

**4. Reasonableness of the proposal that is causing the impact**

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

Comment to Principle 4:

**16 Lanai Place, Beacon Hill**

The impact upon the views obtained from the ground floor level of Lanai Place arise as a result

of the proposed third floor addition. The building footprint is situated on a slope exceeding 40%, with substantial existing excavation works to accommodate the existing dwelling. The proposed works comply with the front, rear and side setback requirements. Due to the steep topography of the site, the proposed development extends beyond the prescribed side boundary envelope and wall height maximum requirement of the WDCP as well as the maximum building height prescribed within Clause 4.3 Height of Buildings of the WLEP 2011.

As has been detailed above in Steps 1 through to Step 3, the extent of view loss is confined to the bedroom and secondary balcony on the ground floor level of 16 Lanai Place, with the existing distant water views, partial lagoon views and expansive district views being maintained from the kitchen, dining and living areas as well as the balcony - all from standing and seated positions.

For these reasons, the non-compliances do not give rise to an unreasonable impact upon the views obtained from 16 Lanai Place, Beacon Hill. Therefore, the proposal provides for a reasonable sharing of views between properties.

#### **14 Lanai Place, Beacon Hill**

As has been detailed within the assessment report, the impact upon the views obtained from adjoining and surrounding properties arise as a result of the proposed third floor addition. The building footprint on the subject site is situated on a slope exceed 40%, with substantial excavation works having been undertaken to accommodate the existing dwelling. The proposed development, due to the slope of the land, achieves compliance with the maximum building height at the rear of the building, then gradually descends toward the north where the maximum building height results in a numeric non-compliance to Clause 4.3 of the WLEP 2011. Therefore, when viewed from the properties along Lanai Place, the building height is 7.09 metres, which is compliant with the requirement of Clause 4.3 of the WLEP 2011.

Furthermore, due to the slope of the land, the proposal results in a numeric non-compliance to both the wall height and side boundary envelope controls within the WDCP. The assessment has found that these non-compliances are acceptable, given the nature of the site and the fact the proposal achieves compliant front, side and rear boundary setbacks, as well as a compliant landscaped area.

As has been detailed in Principles 1, 2 and 3, while the extent of view loss occurs from living areas of 14 Lanai Place, these views are obtained in a north-easterly direction over the side boundary and the retention of views over a side boundary are often unrealistic to maintain, regardless of whether the proposal is compliant or non-compliant to relevant development controls and standards. It is also noted the water views obtained are distant views and the expectation to retain distant water views is unrealistic as the surrounding natural environment has the potential to obscure these views.

In this particular circumstance, and notwithstanding the extent of numeric non-compliance to relevant built form controls and development standards, the proposed development provides a reasonable sharing of views between properties.

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

#### Comment:

The proposal has utilised innovative design solutions to improve the urban environment.

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

Comment:

The site has multiple canopy trees within the front northern portion of the site. These are being retained.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is 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:

The proposed third storey is stepped in from the side and front elevations of the existing dwelling, thus allowing for a high level of articulation which separates the built form and avoids continuous wall planes as the height of the development increases. Notwithstanding the numeric non-compliances to Clause 4.3 Height of buildings, B1 Wall Heights and B3 Side Boundary Envelope (which arise as a direct result of the steep topography), the building bulk is considered reasonable in the context of the site, with minimal environmental and amenity impacts upon adjoining and nearby properties.

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

Comment:

The subject site is unique in that it is sited at the end of a private shared driveway with 23, 25 and 27 Carolyn Avenue. The subject site, and adjoining land to the west and north, are sited on a steep topography surrounded by dense vegetation and large canopy trees. When viewed from the properties to the south, along Lanai Place, the proposed works will present as a second storey that is visually commensurate with the adjoining and nearby properties along the shared driveway, which is not unreasonable for the context of the site. The site, due to the dense vegetation and steep topography, cannot be easily viewed from properties to the north. And, when viewed from the shared driveway, the proposed development will be visually commensurate with the other dwellings along the shared driveway. In this instance, and notwithstanding the extent of non-compliance to this control, the proposed development will not become a visually dominant structure when viewed from adjoining properties, streets, waterways or land zoned for public recreation.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is 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 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$9,822 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$982,244.

#### **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 2021;
- 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 the Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify the variation.

### PLANNING CONCLUSION

The application was referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10% to Clause 4.3 Height of Buildings of the *Warringah Local Environmental Plan 2011* (WLEP 2011).

The proposal includes two (2) variations to the built form controls under the Warringah Development Control Plan (WDPC), these being: B1 Wall Height and B3 Side Boundary Envelope. A detailed discussion has been undertaken for D7 Views and D9 Building Bulk which further details the reasonableness of the proposal. In regards to these variations, the proposal does not result in any unreasonable environment and/or amenity impacts upon the subject site or adjoining properties, with the proposal achieving all relevant objectives of these built form controls.

The proposed development application was notified in accordance with the Northern Beaches Council Community Participation Plan (CPP) for fourteen (14) days. One (1) submission was received during this time which raised concern regarding view loss and the proposed maximum building height. The assessment found that the proposed development provided reasonable view sharing, notwithstanding the extent of non-compliance to Clause 4.3 of the WLEP 2011 and B1 and B3 of the WDPC.

The proposal has, therefore, been 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 the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the *Warringah Local Environmental Plan 2011* because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/0265 for Alterations and additions to a dwelling house on land at Lot 112 DP 788265, 29 Carolyn Avenue, BEACON HILL, subject to the conditions printed below:

### Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section

4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

**GENERAL CONDITIONS**

**1. Approved Plans and Supporting Documentation**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

<b>Approved Plans</b>				
<b>Plan Number</b>	<b>Revision Number</b>	<b>Plan Title</b>	<b>Drawn By</b>	<b>Date of Plan</b>
DA.00	F	Site Plan	Du Plessis + Du Plessis Architects Pty Ltd	11 March 2024
DA.02	F	Ground Floor Demolition Plan	Du Plessis + Du Plessis Architects Pty Ltd	11 March 2024
DA.03	E	First floor Demolition Plan	Du Plessis + Du Plessis Architects Pty Ltd	11 March 2024
DA.04	F	Second Floor Demolition Plan	Du Plessis + Du Plessis Architects Pty Ltd	11 March 2024
DA.05	F	Ground Floor Plan	Du Plessis + Du Plessis Architects Pty Ltd	11 March 2024
DA.06	F	First Floor Plan	Du Plessis + Du Plessis Architects Pty Ltd	11 March 2024
DA.07	F	Second Floor Plan	Du Plessis + Du Plessis Architects Pty Ltd	11 March 2024
DA.08	F	Third Floor Plan	Du Plessis + Du Plessis Architects Pty Ltd	11 March 2024
DA.09	F	Roof Plan	Du Plessis + Du Plessis Architects Pty Ltd	11 March 2024
DA.10	E	Section ZZ & Section XX	Du Plessis + Du Plessis Architects Pty Ltd	11 March 2024
DA.11	F	East Elevation and West Elevation	Du Plessis + Du Plessis Architects Pty Ltd	11 March 2024
DA.12	F	North Elevation and Sectional South Elevation	Du Plessis + Du Plessis Architects Pty Ltd	11 March 2024

<b>Approved Reports and Documentation</b>			
<b>Document Title</b>	<b>Version Number</b>	<b>Prepared By</b>	<b>Date of Document</b>
Geotechnical Assessment (reference: AG 22096)	-	Ascent Geo	21 March 2022
Arboricultural Impact Assessment Report	-	Seasoned Tree Consulting	29 February 2024



BASIX Certificate (A1739258)	-	Clockwork Consulting	11 March 2024
Waste Management Plan	-	Du Plessis + Du Plessis Architects Pty Ltd	March 2024
SM.01 Concept Stormwater & Site Management Plan	F	Du Plessis + Du Plessis Architects Pty Ltd	11 March 2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

**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	Not dated

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

#### 4. General Requirements

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

Demolition and excavation works are restricted to:

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

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether

- the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) 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 an 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 following is required:
    - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.
    - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
    - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
  - (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or 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 sewerred areas or managed on-site in unsewerred 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. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,822.44 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 (as amended).

The monetary contribution is based on a development cost of \$982,243.90.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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 \$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 Certifier prior to the issue of the Construction Certificate.

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

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

**BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

7. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

8. **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 Certifier 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 Certifier 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.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical 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 Certifier prior to the issue of a Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **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 Certifier 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.

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

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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 ensure no substance other than rainwater enters the stormwater system and waterways.

12. **Compliance with Standards**

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

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

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

13. **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 Certifier demonstrating the works are in compliance with Sydney Water requirements.

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

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

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

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

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

14. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment. The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular: a) section 8 Recommendations and Mitigation Strategies, and in particular 8.3 Project Arborist

- supervision of excavation works near tree 1 - Sydney Blue Gum; and trunk and branch protection works under 8.4,
- b) section 9 Arboricultural Works Method Statement and Tree Protection Requirements,
- c) section 10 Hold Points,
- d) appendix 1A - Tree Protection Plan works.

All tree protection measures specified must: be in place before work commences on the site; be maintained in good condition during the construction period; and remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

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.

## DURING BUILDING WORK

### 15. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
  - i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans and Survey,
  - ii) all trees and vegetation located on adjoining properties,
  - iii) all trees and vegetation within the road reserve.
  
- b) Tree protection shall be undertaken as follows:
  - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
  - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
  - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
  - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
  - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
  - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
  - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
  - 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 AS4970-2009 Protection of trees on development sites,  
ix) the activities listed in section 4.2 of AS4970-2009 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 AS4373-2007 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 Principal Certifier must ensure that:

c) The arboricultural works listed in a) and b) are undertaken as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment and/or Project Arborist as applicable.

Reason: Tree and vegetation protection.

16. **Wildlife Protection**

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

Reason: To protect native wildlife.

17. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

18. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

19. **24 Hour Access to Shared Driveway**

The existing shared driveway for the subject site and 23, 25 and 27 Carolyn Avenue, Beacon Hill is to remain unobstructed during construction, with continued 24 hour access maintained for the occupants (and visitors) to these properties.

Reason: To minimise construction impacts upon adjoining properties.

20. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

21. **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 Certifier.

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

**BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

22. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, 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 and vegetation protection.

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

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

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

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

24. **Priority Weed Removal and Management**

All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

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

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

25. **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 Principal Certifier 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 authority 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 Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.

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

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

27. **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 Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure bushland management.

28. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier 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.

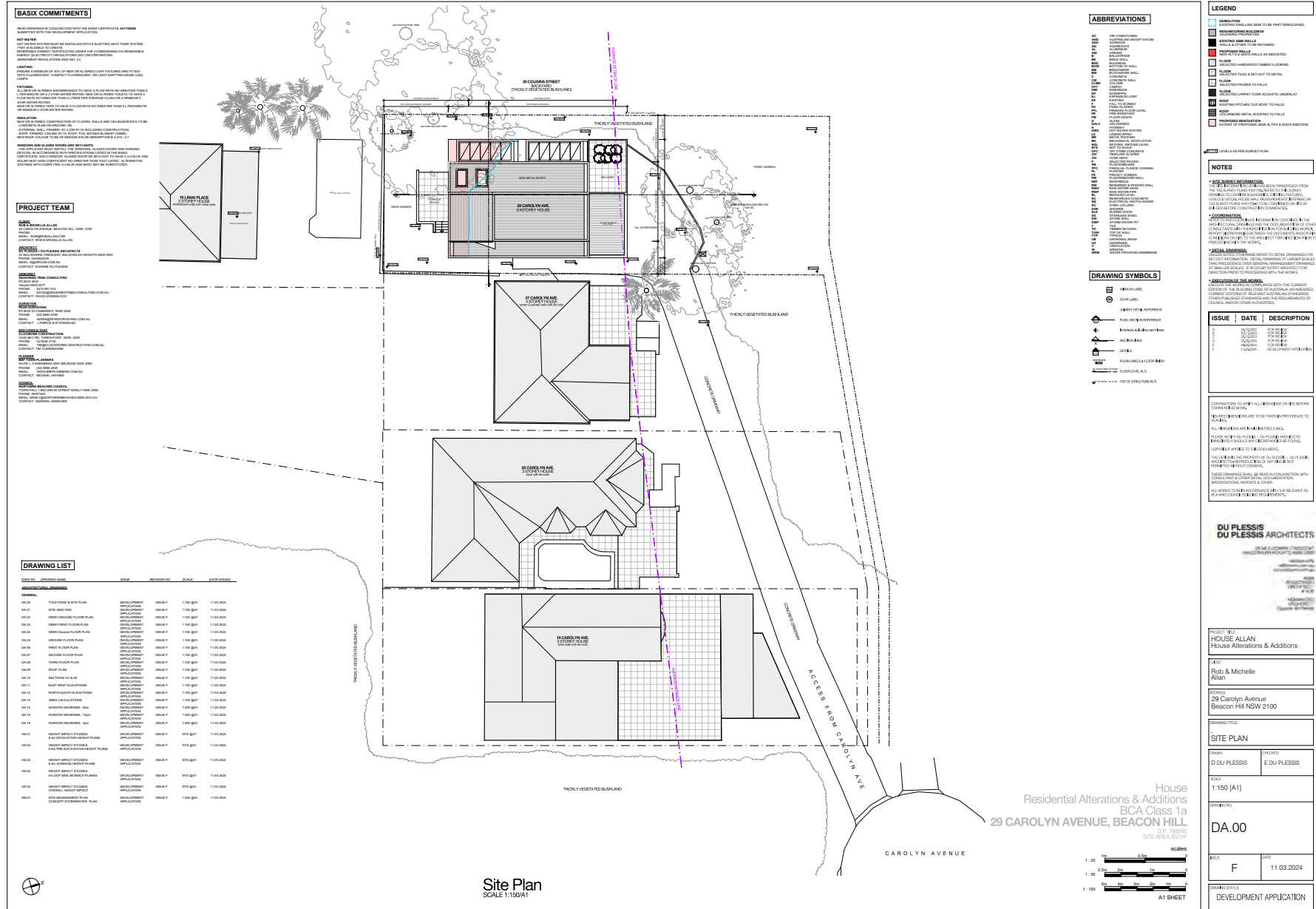
Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

29. **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.



**BASIC COMMITMENTS**

ALL CONSTRUCTION COMMITMENTS ARE TO BE MADE CERTIFICATED BY THE DEVELOPER TO THE DEVELOPMENT APPLICATION.  
 THE DEVELOPER MUST BE INSTALLED WITHIN A LIMITED TIME FRAME.  
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**PROJECT TEAM**

- CLIENT**
- DESIGNER**
- ENGINEER**
- CONSULTANTS**
- PERMITS**
- CONTRACTORS**
- APPROVALS**
- OTHER**
- COMMENTS**

**DRAWING LIST**

DRAWING NO.	TITLE	DATE	ISSUED BY	SCALE	SHEET NO.	TOTAL SHEETS
DA-00	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	1	1
DA-01	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	2	2
DA-02	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	3	3
DA-03	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	4	4
DA-04	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	5	5
DA-05	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	6	6
DA-06	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	7	7
DA-07	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	8	8
DA-08	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	9	9
DA-09	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	10	10
DA-10	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	11	11
DA-11	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	12	12
DA-12	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	13	13
DA-13	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	14	14
DA-14	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	15	15
DA-15	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	16	16
DA-16	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	17	17
DA-17	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	18	18
DA-18	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	19	19
DA-19	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	20	20
DA-20	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	21	21
DA-21	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	22	22
DA-22	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	23	23
DA-23	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	24	24
DA-24	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	25	25
DA-25	DEVELOPMENT APPLICATION	11.03.2024	E DU PLESSIS	1:100 (A1)	26	26

**ABBREVIATIONS**

- AC - AIR CONDITIONING
- AD - ABOVE GROUND
- AG - ABOVE GROUND
- AI - ABOVE GROUND
- AL - ABOVE GROUND
- AN - ABOVE GROUND
- AP - ABOVE GROUND
- AR - ABOVE GROUND
- AS - ABOVE GROUND
- AT - ABOVE GROUND
- AV - ABOVE GROUND
- AW - ABOVE GROUND
- AX - ABOVE GROUND
- AY - ABOVE GROUND
- AZ - ABOVE GROUND
- BA - ABOVE GROUND
- BB - ABOVE GROUND
- BC - ABOVE GROUND
- BD - ABOVE GROUND
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- BG - ABOVE GROUND
- BH - ABOVE GROUND
- BI - ABOVE GROUND
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- BK - ABOVE GROUND
- BL - ABOVE GROUND
- BM - ABOVE GROUND
- BN - ABOVE GROUND
- BO - ABOVE GROUND
- BP - ABOVE GROUND
- BQ - ABOVE GROUND
- BR - ABOVE GROUND
- BS - ABOVE GROUND
- BT - ABOVE GROUND
- BU - ABOVE GROUND
- BV - ABOVE GROUND
- BW - ABOVE GROUND
- BX - ABOVE GROUND
- BY - ABOVE GROUND
- BZ - ABOVE GROUND
- CA - ABOVE GROUND
- CB - ABOVE GROUND
- CC - ABOVE GROUND
- CD - ABOVE GROUND
- CE - ABOVE GROUND
- CF - ABOVE GROUND
- CG - ABOVE GROUND
- CH - ABOVE GROUND
- CI - ABOVE GROUND
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- CL - ABOVE GROUND
- CM - ABOVE GROUND
- CN - ABOVE GROUND
- CO - ABOVE GROUND
- CP - ABOVE GROUND
- CQ - ABOVE GROUND
- CR - ABOVE GROUND
- CS - ABOVE GROUND
- CT - ABOVE GROUND
- CU - ABOVE GROUND
- CV - ABOVE GROUND
- CW - ABOVE GROUND
- CX - ABOVE GROUND
- CY - ABOVE GROUND
- CZ - ABOVE GROUND
- DA - ABOVE GROUND
- DB - ABOVE GROUND
- DC - ABOVE GROUND
- DD - ABOVE GROUND
- DE - ABOVE GROUND
- DF - ABOVE GROUND
- DG - ABOVE GROUND
- DH - ABOVE GROUND
- DI - ABOVE GROUND
- DJ - ABOVE GROUND
- DK - ABOVE GROUND
- DL - ABOVE GROUND
- DM - ABOVE GROUND
- DN - ABOVE GROUND
- DO - ABOVE GROUND
- DP - ABOVE GROUND
- DQ - ABOVE GROUND
- DR - ABOVE GROUND
- DS - ABOVE GROUND
- DT - ABOVE GROUND
- DU - ABOVE GROUND
- DV - ABOVE GROUND
- DW - ABOVE GROUND
- DX - ABOVE GROUND
- DY - ABOVE GROUND
- DZ - ABOVE GROUND

**DRAWING SYMBOLS**

- WALL
- DOOR
- FLOOR
- CEILING
- ROOF
- STAIR
- LANDSCAPE
- VEGETATION
- WATER
- TOP OF STRUCTURE

**LEGEND**

- WALL
- DOOR
- FLOOR
- CEILING
- ROOF
- STAIR
- LANDSCAPE
- VEGETATION
- WATER
- TOP OF STRUCTURE

**NOTES**

1. ALL CONSTRUCTION COMMITMENTS ARE TO BE MADE CERTIFICATED BY THE DEVELOPER TO THE DEVELOPMENT APPLICATION.  
 2. THE DEVELOPER MUST BE INSTALLED WITHIN A LIMITED TIME FRAME.  
 3. THE DEVELOPER MUST BE INSTALLED WITHIN A LIMITED TIME FRAME.  
 4. THE DEVELOPER MUST BE INSTALLED WITHIN A LIMITED TIME FRAME.



PROJECT TITLE  
 HOUSE ALLAN  
 House Alterations & Additions

CLIENT  
 Rob & Michelle  
 Allan

ADDRESS  
 29 Carolyn Avenue  
 Beacon Hill NSW 2100

DRAWING TITLE  
 SITE PLAN

DESIGNED BY  
 D DU PLESSIS

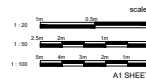
DESIGNED BY  
 E DU PLESSIS

SCALE  
 1:150 (A1)

DRAWING NO.  
 DA.00

REV. F DATE 11.03.2024

DRAWING TITLE  
 DEVELOPMENT APPLICATION



**BASIC COMMITMENTS**

**ALL COMMITMENTS TO BE COMPLETED WITHIN THE 60 DAY CERTIFICATE OF DEVELOPMENT PERIOD.**

**WATER:**  
 ALL WATER SYSTEMS MUST BE INSTALLED WITHIN 60 DAYS OF THE COMMENCEMENT OF WORK.  
 ALL WATER SYSTEMS MUST BE INSTALLED WITHIN 60 DAYS OF THE COMMENCEMENT OF WORK.  
 ALL WATER SYSTEMS MUST BE INSTALLED WITHIN 60 DAYS OF THE COMMENCEMENT OF WORK.  
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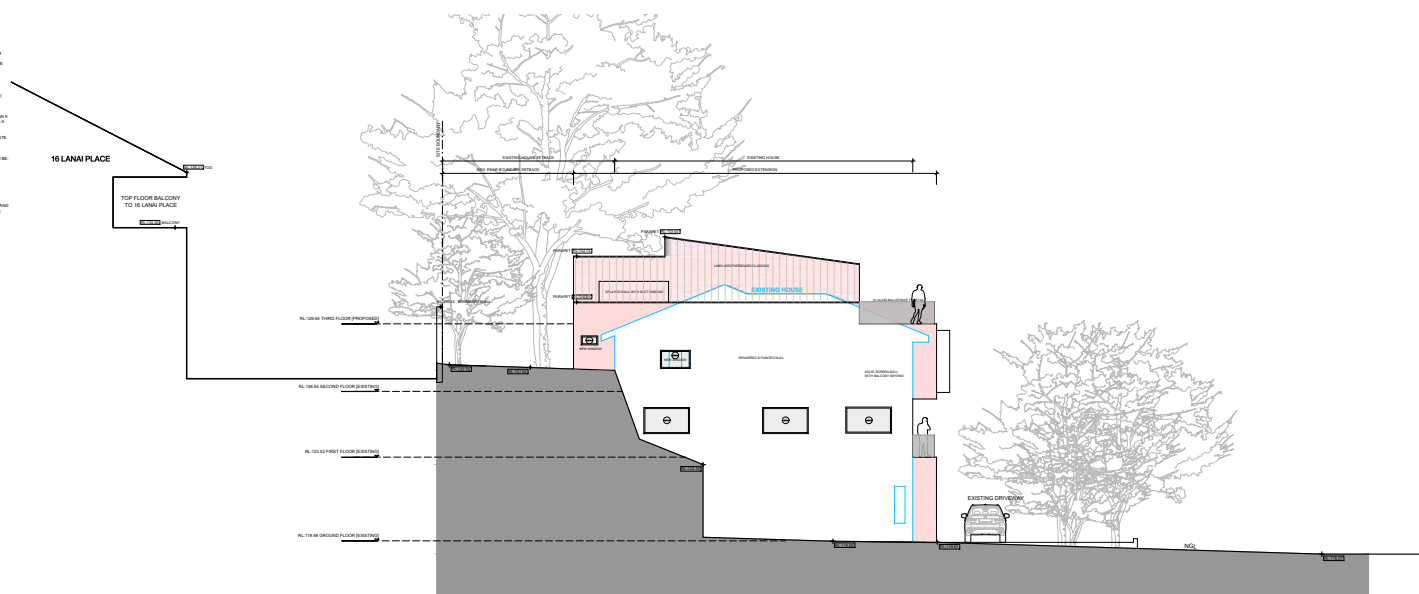
**SEWERAGE:**  
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 ALL SEWERAGE SYSTEMS MUST BE INSTALLED WITHIN 60 DAYS OF THE COMMENCEMENT OF WORK.

**LANDSCAPE:**  
 ALL LANDSCAPE WORK MUST BE COMPLETED WITHIN 60 DAYS OF THE COMMENCEMENT OF WORK.  
 ALL LANDSCAPE WORK MUST BE COMPLETED WITHIN 60 DAYS OF THE COMMENCEMENT OF WORK.  
 ALL LANDSCAPE WORK MUST BE COMPLETED WITHIN 60 DAYS OF THE COMMENCEMENT OF WORK.  
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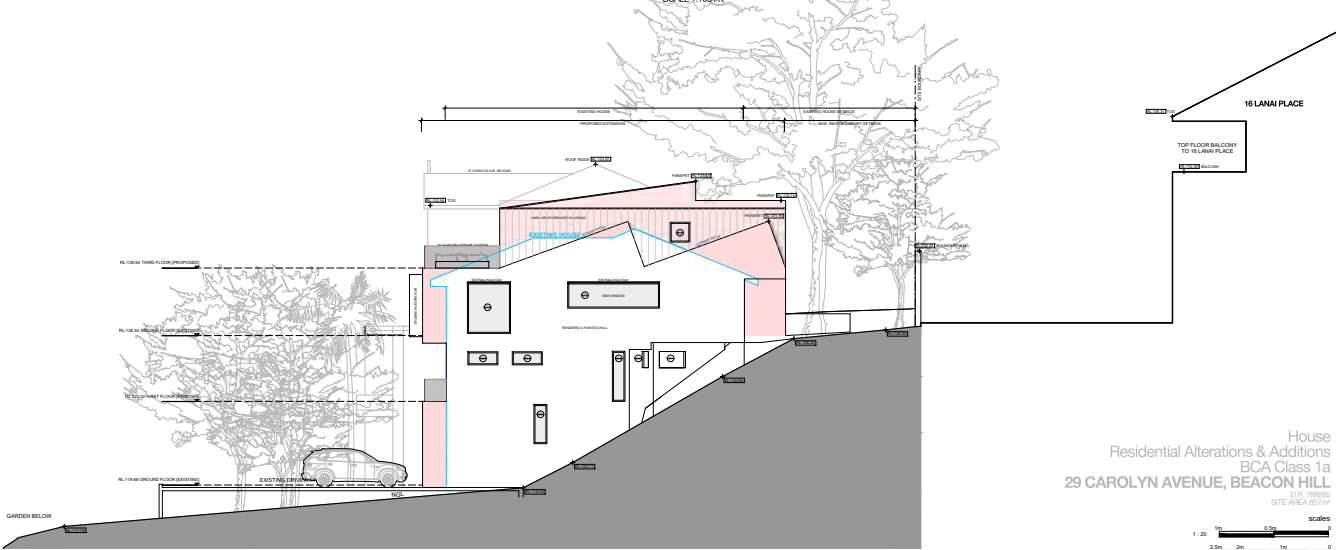
**ROOFING:**  
 ALL ROOFING WORK MUST BE COMPLETED WITHIN 60 DAYS OF THE COMMENCEMENT OF WORK.  
 ALL ROOFING WORK MUST BE COMPLETED WITHIN 60 DAYS OF THE COMMENCEMENT OF WORK.  
 ALL ROOFING WORK MUST BE COMPLETED WITHIN 60 DAYS OF THE COMMENCEMENT OF WORK.  
 ALL ROOFING WORK MUST BE COMPLETED WITHIN 60 DAYS OF THE COMMENCEMENT OF WORK.

**PAINTING:**  
 ALL PAINTING WORK MUST BE COMPLETED WITHIN 60 DAYS OF THE COMMENCEMENT OF WORK.  
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**FINISHES:**  
 ALL FINISHES MUST BE COMPLETED WITHIN 60 DAYS OF THE COMMENCEMENT OF WORK.  
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 ALL FINISHES MUST BE COMPLETED WITHIN 60 DAYS OF THE COMMENCEMENT OF WORK.



**EAST ELEVATION**  
SCALE 1:100(A1)



**WEST ELEVATION**  
SCALE 1:100(A1)

**LEGEND**

- FOUNDATION
- EXISTING WALLS TO REMAIN
- NEW WALLS TO BE CONSTRUCTED
- EXISTING ROOF TO REMAIN
- NEW ROOF TO BE CONSTRUCTED
- EXISTING FLOORING TO REMAIN
- NEW FLOORING TO BE CONSTRUCTED
- EXISTING DOORS TO REMAIN
- NEW DOORS TO BE CONSTRUCTED
- EXISTING WINDOWS TO REMAIN
- NEW WINDOWS TO BE CONSTRUCTED
- EXISTING BALCONY TO REMAIN
- NEW BALCONY TO BE CONSTRUCTED
- EXISTING DRIVEWAY TO REMAIN
- NEW DRIVEWAY TO BE CONSTRUCTED
- EXISTING LANDSCAPE TO REMAIN
- NEW LANDSCAPE TO BE CONSTRUCTED

**NOTES**

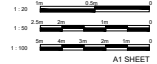
**GENERAL NOTES:**  
 1. ALL WORK TO BE COMPLETED WITHIN THE 60 DAY CERTIFICATE OF DEVELOPMENT PERIOD.  
 2. ALL WORK TO BE COMPLETED WITHIN THE 60 DAY CERTIFICATE OF DEVELOPMENT PERIOD.  
 3. ALL WORK TO BE COMPLETED WITHIN THE 60 DAY CERTIFICATE OF DEVELOPMENT PERIOD.  
 4. ALL WORK TO BE COMPLETED WITHIN THE 60 DAY CERTIFICATE OF DEVELOPMENT PERIOD.

**CONSTRUCTION NOTES:**  
 1. ALL CONSTRUCTION TO BE COMPLETED WITHIN THE 60 DAY CERTIFICATE OF DEVELOPMENT PERIOD.  
 2. ALL CONSTRUCTION TO BE COMPLETED WITHIN THE 60 DAY CERTIFICATE OF DEVELOPMENT PERIOD.  
 3. ALL CONSTRUCTION TO BE COMPLETED WITHIN THE 60 DAY CERTIFICATE OF DEVELOPMENT PERIOD.  
 4. ALL CONSTRUCTION TO BE COMPLETED WITHIN THE 60 DAY CERTIFICATE OF DEVELOPMENT PERIOD.

**FINISHES NOTES:**  
 1. ALL FINISHES TO BE COMPLETED WITHIN THE 60 DAY CERTIFICATE OF DEVELOPMENT PERIOD.  
 2. ALL FINISHES TO BE COMPLETED WITHIN THE 60 DAY CERTIFICATE OF DEVELOPMENT PERIOD.  
 3. ALL FINISHES TO BE COMPLETED WITHIN THE 60 DAY CERTIFICATE OF DEVELOPMENT PERIOD.  
 4. ALL FINISHES TO BE COMPLETED WITHIN THE 60 DAY CERTIFICATE OF DEVELOPMENT PERIOD.



PROJECT TITLE <b>HOUSE ALLAN House Alterations &amp; Additions</b>	
CLIENT <b>Rob &amp; Michelle Allan</b>	
ADDRESS <b>29 Carolyn Avenue Beacon Hill NSW 2100</b>	
DRAWING TITLE <b>East Elevation West Elevation</b>	
DRAWN <b>D DU PLESSIS</b>	DESIGNED <b>E DU PLESSIS</b>
SCALE <b>1:50 (A1)</b>	
DRAWING NO. <b>DA.11</b>	
REVISION <b>F</b>	DATE <b>11.03.2024</b>
DRAWING STATUS <b>DEVELOPMENT APPLICATION</b>	





BASIC COMMITMENTS	
<b>19 CAROLYN AVE.</b>	3/4 STOREY HOUSE
<b>27 CAROLYN AVE.</b>	4 STOREY HOUSE
<b>29 CAROLYN AVE.</b>	3/4 STOREY HOUSE

SECTIONAL SOUTH ELEVATION  
SCALE 1:100/A1

NORTH ELEVATION  
SCALE 1:100/A1

LEGEND	
[Symbol]	FOUNDATION
[Symbol]	EXISTING WALLS TO REMAIN
[Symbol]	NEW WALLS TO BE CONSTRUCTED
[Symbol]	EXISTING ROOF TO REMAIN
[Symbol]	NEW ROOF TO BE CONSTRUCTED
[Symbol]	EXISTING FLOORING TO REMAIN
[Symbol]	NEW FLOORING TO BE CONSTRUCTED
[Symbol]	EXISTING STAIRS TO REMAIN
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[Symbol]	NEW DOORS TO BE CONSTRUCTED
[Symbol]	EXISTING WINDOWS TO REMAIN
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[Symbol]	EXISTING TERRACE TO REMAIN
[Symbol]	NEW TERRACE TO BE CONSTRUCTED
[Symbol]	EXISTING GARAGE TO REMAIN
[Symbol]	NEW GARAGE TO BE CONSTRUCTED
[Symbol]	EXISTING ROOF TO FALL
[Symbol]	NEW ROOF TO BE CONSTRUCTED
[Symbol]	EXISTING ROOFING TO FALL
[Symbol]	NEW ROOFING TO BE CONSTRUCTED
[Symbol]	EXISTING BLANK ALTS & ADDITION
[Symbol]	NEW BLANK ALTS & ADDITION

NOTES	
1.	ALL WORK TO BE COMPLETED BY 31/10/2024.
2.	THE DESIGNER ACCEPTS RESPONSIBILITY FOR THE DESIGN OF THE PROPOSED DEVELOPMENT.
3.	THE DESIGNER HAS CONDUCTED VISUAL IMPACT ASSESSMENTS AND HAS CONSIDERED THE VISUAL IMPACT OF THE PROPOSED DEVELOPMENT ON THE SURROUNDING ENVIRONMENT.
4.	THE DESIGNER HAS CONSIDERED THE IMPACT OF THE PROPOSED DEVELOPMENT ON THE NEIGHBOURHOOD.
5.	THE DESIGNER HAS CONSIDERED THE IMPACT OF THE PROPOSED DEVELOPMENT ON THE HERITAGE VALUE OF THE AREA.
6.	THE DESIGNER HAS CONSIDERED THE IMPACT OF THE PROPOSED DEVELOPMENT ON THE ENVIRONMENTAL VALUE OF THE AREA.
7.	THE DESIGNER HAS CONSIDERED THE IMPACT OF THE PROPOSED DEVELOPMENT ON THE SOCIAL VALUE OF THE AREA.
8.	THE DESIGNER HAS CONSIDERED THE IMPACT OF THE PROPOSED DEVELOPMENT ON THE ECONOMIC VALUE OF THE AREA.
9.	THE DESIGNER HAS CONSIDERED THE IMPACT OF THE PROPOSED DEVELOPMENT ON THE CULTURAL VALUE OF THE AREA.
10.	THE DESIGNER HAS CONSIDERED THE IMPACT OF THE PROPOSED DEVELOPMENT ON THE RECREATIONAL VALUE OF THE AREA.

ISSUE	DATE	DESCRIPTION
1.	24/10/23	FOR REVIEW
2.	24/10/23	FOR REVIEW
3.	24/10/23	FOR REVIEW
4.	24/10/23	FOR REVIEW
5.	24/10/23	FOR REVIEW
6.	24/10/23	FOR REVIEW
7.	24/10/23	FOR REVIEW
8.	24/10/23	FOR REVIEW
9.	24/10/23	FOR REVIEW
10.	24/10/23	FOR REVIEW
11.	24/10/23	FOR REVIEW
12.	24/10/23	FOR REVIEW
13.	24/10/23	FOR REVIEW
14.	24/10/23	FOR REVIEW
15.	24/10/23	FOR REVIEW

**DU PLESSIS ARCHITECTS**  
 18/18 BUCKINGHAM STREET, SUITE 1/1, BEACON HILL NSW 2107  
 PH: (02) 9439 4444  
 WWW.DUPLESSISARCHITECTS.COM.AU

**PROJECT TITLE:**  
 HOUSE ALLAN House Alterations & Additions

**CLIENT:**  
 Rob & Michelle Allan

**ADDRESS:**  
 29 Carolyn Avenue, Beacon Hill NSW 2107

**PROVIDED BY:**  
 North Elevation Sectional South Elevation

**DRAWN BY:**  
 D DU PLESSIS E DU PLESSIS

**SCALE:**  
 1:100 (A1)

**DRAWING NO.:**  
 DA.12

**REV:** **F** **DATE:** 11.03.2024

**DRAWING TITLE:**  
 DEVELOPMENT APPLICATION



Suite 1, 9 Narabang Way Belrose NSW 2085 | Phone: (02) 9986 2535 | Fax: (02) 9986 3050 | www.bbfplanners.com.au

29 February 2024

The Chief Executive Officer  
Northern Beaches Council

**LEP Clause 4.6 exception request  
Height of Buildings (Cl 4.3 of the LEP)  
29 Carolyn Avenue, Beacon Hill**

**1 Introduction**

This is a written request for an exception to the height of buildings development standard made pursuant to clause 4.6 of the LEP. The written request accompanies the development application for alterations and additions at the subject property.

Clause 4.6 of the Warringah LEP 2011 provides a mechanism to allow an exception to a development standard. The proposal contravenes LEP Clause 4.3 'Height of Building' (building height), which is a development standard, and an exception is sought.

The building height applicable to the site is 8.5m. The existing and proposed developments exceed the 8.5m building height standard.

The method of calculating building height follows the Commissioner's judgment in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. Addressed further within this report.

In summary:

- the existing building height is shown in figure 2 below and on the architectural plans. It extends upto approximately 11.5m and represents an exception up approximately 3m;
- the proposed building height is variable and ranges from approximately 6.33m to 13.42m above the existing ground level. It represents a variable exception ranging from approximately 2.3, to 4.03m and up to 4.92m.

Figures 1 to 3 below show the location, nature, and extent of the existing and proposed development's building height exception.

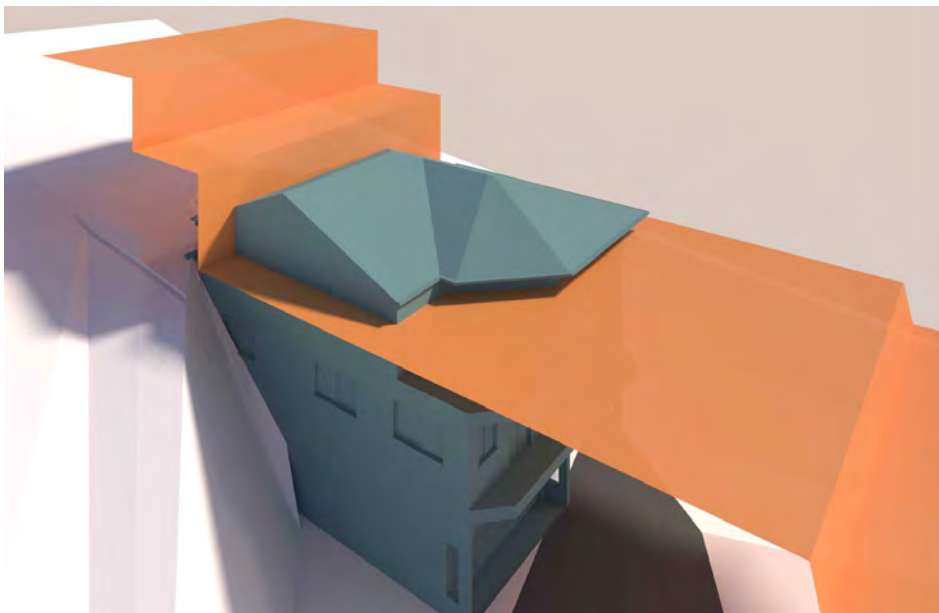


Suite 19 Narabang Way Belrose NSW 2085 | Phone: (02) 9986 2535 | Fax: (02) 9986 3050 | www.bbfplanners.com.au  
BBF TOWN PLANNERS

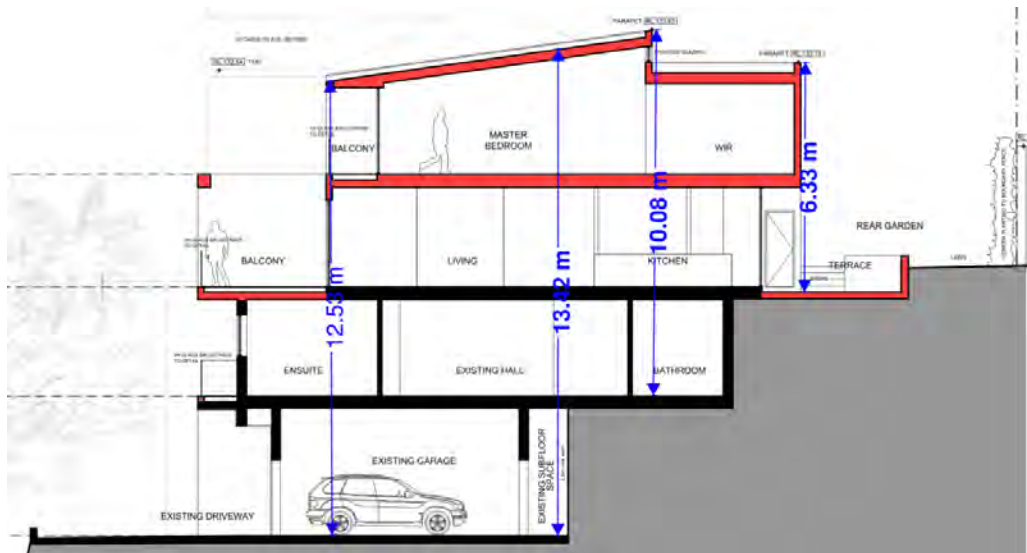
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**Figure 1 – excerpt from drawing HS01 showing the 8.5m building height plane, the proposed building and the location / extent of elements exceeding the building height plane**



**Figure 2 – excerpt from drawing HS01 showing the 8.5m building height plane, the existing building and the location / extent of elements exceeding the building height plane**



**Figure 3 – excerpt section ZZ from architectural plans showing the variable building heights proposed**

## 2 Site and location description

The site is located 29 Carolyn Avenue, Beacon Hill and legally described as Lot 112 in Deposited Plan 788265. The site has an area of 657 m<sup>2</sup>. It is a battle-axe lot and contains a three-storey dwelling house of brick and tile construction.

The site has an access handle (driveway) connecting to Carolyn Avenue with a length of approximately 41m.

Council's contour map at Figure 9 illustrates the steep slope of the land in the local area which affects numbers 23, 25, 27 and 29 Carolyn Avenue (the row of houses adjoining to the east). It shows there is an 18m fall between the rear (southern) and front (northern) boundaries of the site.

The existing dwelling is positioned on the north face of a steep slope which has a gradient of approximately 30%. There is a level difference of approximately 7m within the footprint of the dwelling house. The topography has a significant influence on the built form of the subject site and the adjacent properties to the east including numbers 23, 25, and 27 Carolyn Avenue.

Significant excavation of the site has occurred to accommodate the existing dwelling house.

Given the site's elevation it enjoys significant district, bushland, and distant coastal views.

The existing dwelling house offers sub-optimal amenity to various habitable rooms along the southern and eastern sides of the first-floor level of the building. As shown in figure 7, the existing habitable rooms to the south and east receive no direct sunlight and rely on limited airflow from the excavation void to the south and east to supply natural ventilation.

The existing dwelling house was approved and constructed in 1996/7, with a completion certificate issued in 1997. This means the house was approved under Warringah LEP 1985. At the time an 11m building height development standard was applicable. The existing dwelling house does not comply with the current building height development standard and virtually any

changes to it will trigger the need for a clause 4.6 exception (as required by Council). This circumstance can't be avoided by any proposed development.

Dwelling houses to the east are multi-storey, split-level, dwelling houses with uniform front setbacks. Further afield the area is generally characterised by dwelling houses within landscaped settings.

### 3 Key statutory considerations

Key aspects of LEP Clause 4.6 are repeated below:

*“(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 to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

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

*(b) there are sufficient environmental planning grounds to justify the contravention of the development standard”.*

The objectives of the Height of Building development standard are:

*“(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”.*

#### **4 Clause 4.6 (3)(a) compliance with the development standard is unreasonable or unnecessary.**

Having regard for the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, and in accordance with 4.6 (3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the objectives of the height standard are satisfied.

In the decision of *Wehbe*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The first possible way is relevant to the subject matter and is repeated below:

*1<sup>st</sup> 'The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.'*

*The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable'.*

It can be demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances because it is consistent with the objectives of the Clause 4.3 *height of buildings* of LEP 2011. The objectives of the standard are repeated below along with the way in which the proposal satisfies these objectives:

##### **4.1 Response to objective (a) "to ensure that buildings are compatible with the height and scale of surrounding and nearby development"**

The subject site and those within the row adjoining to the east, are not typical allotments in the context of the R2 low density zone. They are positioned on very steep land on battle axe allotments.

The proposed building form reflects the topography of the land.

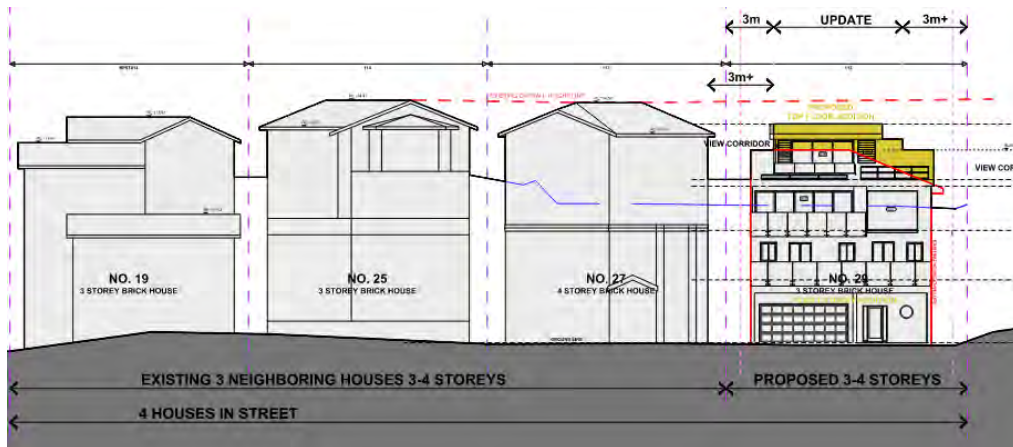
The proposed building form will be compatible with the established pattern of building height, form, and scale of nearby dwelling houses at numbers 23, 25, and 27 Carolyn Avenue (the row of houses to the east shown in figure 4) which are all multi-storey dwelling houses.

The proposed upper-level addition, whilst exceeding the building height, is lower than the height of the row of buildings to the east, noting the proposed roof ridge is RL 133.63 whereas the roof ridge of the adjacent dwelling house to the east is RL 134.5.

Much of the existing building height (mass, GFA, bulk) is located below the interpolated natural ground levels. Therefore, it does not contribute to or create adverse amenity impacts.

The proposed building height does not result a significant increase in the perceivable bulk or scale of the dwelling house. The proposed building scale and form is compatible with the local dwelling house character.

For these reasons the building height of the proposed upper-level is compatible with the height and scale of surrounding and nearby development.



**Figure 4 – character of development to the east that fronts the shared access driveway. The proposed building height will be lower than the adjacent development. The proposed development will be compatible with this established character.**

#### **4.2 Response to objective (b), to minimise visual impact**

The proposed building height exception has sought to minimise its visual impact noting the following:

The front setback to the proposed upper-level addition is increased compared to that of the existing dwelling house on the site and nearby dwelling houses at 23, 25, and 27 Carolyn Avenue. It aids the proposed upper-level addition being visually recessive.

The existing dwelling house’s wall heights are established and relatively modest increases are proposed that are compatible with the adjacent dwellings to the east.

The proposed upper-level extension provides:

- increased side boundary setbacks
- increased front boundary setback
- a reduced floor area / floor plate compared to levels one and two of the existing dwelling house
- a compliant rear boundary setback
- compliant site coverage/landscaped area and no additional excavation.

The proposed building height does not result an inappropriate increase in the perceivable bulk or scale of the dwelling within the context of the local development character.

The local topography changes to the west and south of the site. The dwelling houses to the west and the south are positioned on different topographical levels. From these areas the proposed upper-level addition will present as a recessive building mass, compatible with the established built form.

The property has a small visual catchment due to its cul-de-sac location and long (41m) battle-axe driveway frontage. It will not present in appropriately to the streetscape or to adjoining properties.

In these ways the proposed building height exception minimises its visual impact.

#### **4.3 Response to objective (b), to *minimise disruption of views***

An appropriate view sharing outcome is achieved as shown in figures 5 and 6 below.

Consideration has been given to the Tenacity view sharing planning principle in developing the design, amended from that proposed in DA2022/1172. The amended design increases the side setbacks and reduces the width of the proposed upper floor level, in turn, reducing the view obstruction from the rear neighbouring property at 16 Lanai Place.

As indicated in the figures below, the view comprises tree canopies and roofs of dwelling houses in the foreground; bushland and water views in the middle and long distance (these are the more valued aspects of the view).

The addition will obstruct some of the roofs and urban tree canopy within the foreground of the view (figure 6). The large area of more valued natural features in the middle and long distance will be retained.

Most of the view obstruction would arise from building elements that are compliant with the planning controls, being the southern section of the proposed new storey (level 4) where it meets the natural / existing ground level at the rear of the site.

The proposal has a better view sharing outcome than a LEP/DCP compliant building envelope noting the proposed side setbacks meet and exceed the minimum requirements and the lower than maximum building height proposed above the rear levels of the property (see figures 7/8).

The amended design delivers an appropriate view sharing outcome for an addition within the rear section of the site.

The amended design demonstrates that it is a skilled design, more considered than the previous DA.

In summary the amended design:

- has considered the potential view impacts
- has minimised and reduced the impacts of the previous design in DA 2022/1172
- satisfies the view sharing principles established by the Tenacity planning principle.

For these reasons, the proposed building height exception minimises its disruption of views.

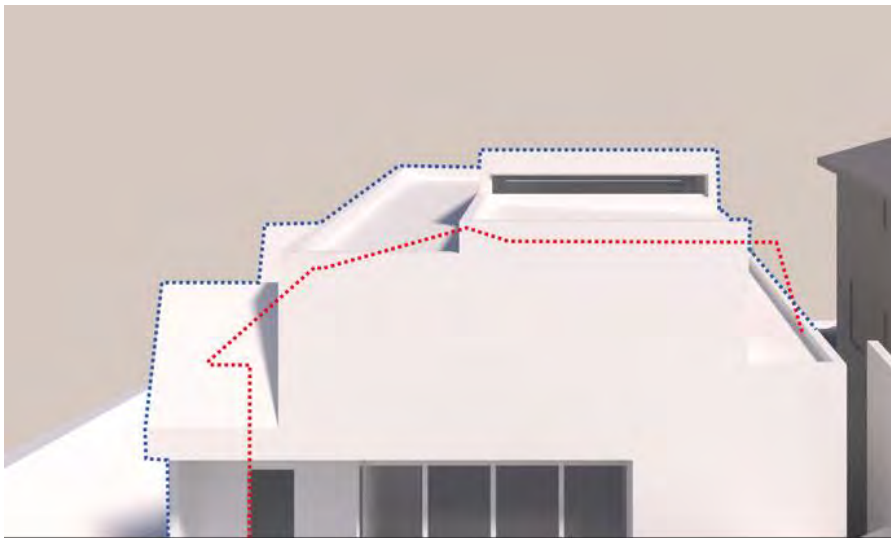


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**Figure 5 – character of the view from the rear adjoining property at 16 Lanal Place**



**Figure 6 – modelled extent of the potential view impact**

#### **4.4 Response to objective (b) to minimise loss of privacy**

The proposed development will minimise the loss of privacy noting the following aspects of the proposal:

- Appropriate side building setbacks are provided by the proposed additions, noting the significant 3m (east) and 4.3m (west) side setbacks proposed to the upper-level addition.
- Side boundary facing window openings are limited and appropriate in terms of their function (the rooms that they serve), their location, sill height, and extent.
- Privacy screens are proposed to the balconies and terraces, on each side.
- No upper floor balconies or terraces of a size that would allow for the congregation of people are proposed that are not appropriately screened or adjacent to sensitive living areas within the neighbouring properties.

For these reasons, the proposed building height exception minimises its loss of privacy.

#### **4.5 Response to objective (b) to minimise loss of solar access**

Shadow diagrams accompany and support the proposal. They demonstrate that compliance with the DCP is achieved. The following key aspects are noted.

The site and the adjoining properties have a north / south orientation. As a result, the shadow diagrams demonstrate that shade will be relatively evenly shared (mainly) between the rear of the property at 20 Cousins Road (morning) and the rear yard of 27 Carolyn Avenue (afternoon) to the east. This reflects the existing development & shading pattern for properties and provides an appropriate distribution of shade, consistent with the development pattern along the street.

In accordance with of the DCP Control D6, the sunlight available to the private open space of adjoining properties will not be impacted by more than 3 hours, between 9am and 12pm on 21 June. Therefore, the provisions of the control are satisfied by the proposal.

Therefore, the proposed development will minimise the loss of solar access by maintaining DCP compliant solar access to the adjoining properties.

#### **4.6 Response to objective (c) "to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments"**

The proposed development will minimise any adverse impact on the scenic quality of Warringah's coastal and bush environments, noting:

- The property has a small visual catchment due to its cul-de-sac location and battle-axe driveway frontage (it is obscured from the street by the existing development due to its location at the end of a 41 metre driveway); it will not present inappropriately to the streetscape.
- The proposed development is not adjacent to coastal land.
- The existing dwelling house's building heights are established, and only modest increases are proposed (figures 1/2).
- The proposed upper-level will present a recessive storey and a built form that is characteristic of the height and scale of dwelling houses in the local area (figure 4).



- The building design modulates its building form. It steps in response to the slope of the land, with the upper-level inset from the front and side boundaries presenting a recessive building level.
- When viewed from bushland to the north, the bushland is located at medium to long distances from the site (figures 5 and 6). The proposed upper-level addition will be viewed within the context of the established development to the east at numbers 23, 25, and 27 Carolyn Avenue. It will also be viewed within the hillside context of the development within the local area. The proposed upper-level addition is compatible with the height, scale and mass of the row of buildings to the east. It will therefore have an appropriate and compatible impact on the scenic quality of the bushland environment.

**4.7 Response to objective (d) – “to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities”.**

The proposed development will manage its visual impact when viewed from public places such as parks and reserves, roads, and community facilities, noting:

- The property has a small visual catchment due to its cul-de-sac location and battle-axe driveway frontage; it will not present inappropriately to the streetscape or to adjoining properties.
- The proposed upper-level extension will:
  - not be visible from parks or community facilities.
  - not be visible from the road due to the site / building’s battle-axe location.

**5 Clause 4.6 (3)(b) sufficient environmental planning grounds to justify contravening the development standard**

In accordance with 4.6 (3)(b) there are sufficient environmental planning grounds to justify contravening the development standard given that: These planning grounds include:

**5.1 Lesser impact on views than a complying building envelope**

As noted previously in section 4.3, the proposed building envelope has a better view sharing outcome than a compliant building envelope noting the increased side setbacks proposed and the lower than maximum building height proposed above the rear levels of the property

The proposed building envelope has a lesser impact on views than a complying building envelope. This is demonstrated in figures 5 – 8 and within the architectural plan set.

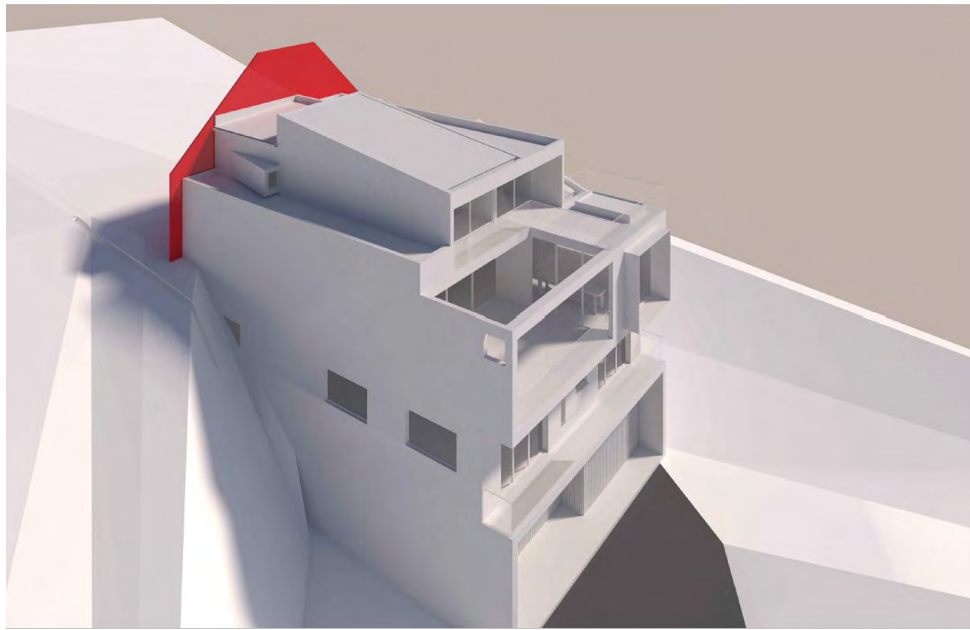
The following characteristics of the proposed built form at the rear of the proposed development are noted in this regard:

- The southern extent proposed upper floor addition is lower than the 8.5 metres established by the development standard. A building of 8.5 metres would have greater impact on the views enjoyed from properties to the south.
- Increased / compliant side setbacks
- compliant wall height

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- compliant side boundary envelope



**Figure 7 – shape and extent of a modelled complying building envelope at the rear of the dwelling house**



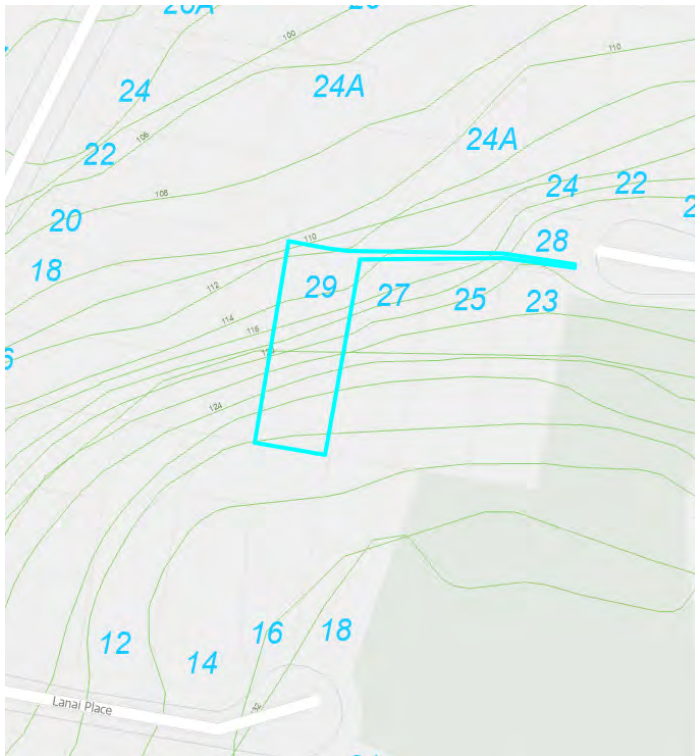
**Figure 8 –a complying building envelope at the rear of the dwelling house would have a greater impact on views from the rear / south.**

**5.2 Steep slope and the existing dwelling house levels**

The excerpt of Council’s contour map at Figure 9 illustrates the steep slope of the land in the local area which affects numbers 23, 25, 27 and 29 Carolyn Avenue. It shows there is an 18m fall between the rear (southern) and front (northern) boundaries of the site.

The steep slope of the land and the existing dwelling house levels are established. There is a significant and deep excavation (upto approx. 5 - 7m). Strict compliance with the building height standard is not achievable. Figures 11 to 13 assist in illustrating the significant excavation that has occurred to accommodate the existing dwelling house.

Much of the existing building height (mass, GFA, bulk) is located below the interpolated natural ground levels. Therefore, it does not contribute to adverse amenity impacts or incompatibility with neighbouring dwelling houses (to the east).



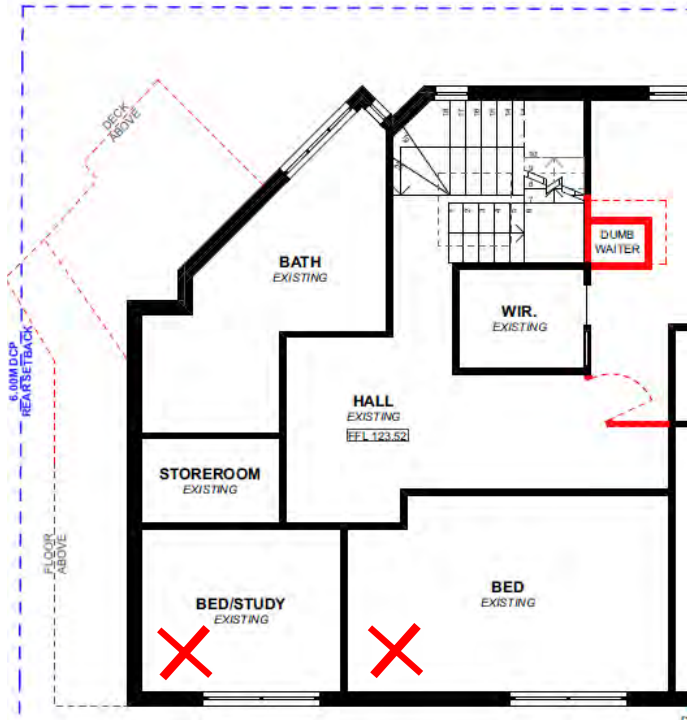
**Figure 9 –subdivision pattern and topographic contours (Northern Beaches Council maps)**

**5.3 Improved internal amenity**

The existing dwelling house offers sub-optimal amenity to various habitable rooms along the southern and eastern sides of the first-floor level of the building (figure 10). The existing habitable rooms to the south and east receive no direct sunlight and rely on limited airflow from the excavation void to the south and east to supply natural ventilation.

The proposed development will provide improved amenity to the existing dwelling by enabling these rooms to be repurposed.

The DA will also include significant improvements to the existing dwelling house's design aesthetic.



**Figure 10 – existing habitable rooms to the south and east receive limited solar access and natural ventilation**

**5.4 Existing non-compliance**

The applicant advises that the existing dwelling house was approved and constructed in 1996/7, with a completion certificate issued in 1997. This means the house was approved under Warringah LEP 1985 which had an 11m building height development standard applicable.

The existing dwelling house does not comply with the current building height development standard and virtually any changes to it will trigger the need for a clause 4.6 exception. This circumstance can't be avoided; it establishes the existing character of the built form on the subject site which any proposed development must be reconciled with. Furthermore, such an outcome is appropriate noting that the development benefits from enforceable development consent and an existing approval right which may continue, as provided under section 4.68 of the Environmental Planning & Assessment Act.

### 5.5 Distortion of the maximum building height plane

The prior excavation of the land distorts the maximum building height plane applicable to the site.

The method of calculating the building height follows the Commissioner's judgment in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. In accordance with the Merman judgement at 74:

*'The prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014'.*

It is clear from the various accompanying images, survey, and architectural plans that the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. To this end, the proposed building height is compatible with the building heights of the adjacent dwelling houses at 23, 25, and 27 Carolyn Avenue.



**Figure 11** – character of existing rock excavation to accommodate the existing dwelling - eastern side





**Figure 12 - character of existing rock excavation to accommodate the existing dwelling - eastern side**



**Figure 13 - character of existing rock excavation behind the garage**

## 5.6 Objectives of the Act

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the proposal is consistent with the following objectives at under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

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

*(g) to promote good design and amenity of the built environment, through consistent streetscape alignment and increased landscaping at the street edge.*

**In response to (c)**, the proposal will facilitate the orderly and economic use and development of the land, on zoned residential land, in a manner that satisfies the applicable planning considerations because it will facilitate, renewal of the dwelling house, improved housing in a highly desirable location, designed to meet contemporary living needs, and meet building sustainability (BASIX) requirements.

The existing dwelling house offers sub-optimal amenity to various habitable rooms along the southern and eastern sides of the first-floor level of the building. The existing habitable rooms to the south and east receive no direct sunlight and rely on limited airflow from the excavation void to the south and east to supply natural ventilation.

**In response to (g)**, the proposal results in a residential development that will promote good design and amenity of the built environment. The established built form character is maintained for the land through an upper-level addition that is compatible with the height and form of adjoining developments, with the proposed improvements positively contributing to character of the area.

For these reasons there are sufficient environmental planning grounds to justify the exception to the development standard.

## 6 Conclusion:

The exception proposed to LEP Clause 4.3 'Height of Building' has been appropriately acknowledged and the circumstances assessed, having regard to the provisions of clause 4.6 and the relevant case law.

In conclusion, Council can be satisfied that this written request has adequately addressed the matters required by cl 4.6(3) and that the proposed development is appropriate because it is consistent with the objectives of the development standard. Therefore, the exception pursuant to clause 4.6 should be granted development consent.

Michael Haynes  
**Director - BBF Town Planners**

**ITEM 3.2 MOD2023/0556 - 989 BARRENJOEY ROAD PALM BEACH -  
MODIFICATION OF DEVELOPMENT CONSENT DA2021/2447  
GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A  
DWELLING HOUSE INCLUDING A SWIMMING POOL**

**PURPOSE**

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

**RECOMMENDATION**

That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 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.

THAT Council as the consent authority **approves** Development Consent to Mod2023/0556 for Modification of Development Consent DA2021/2447 granted for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 58 DP 13620 & Lot LIC 320226, 989 Barrenjoey Road PALM BEACH, subject to the conditions set out in the Assessment Report.

<b>Reporting manager</b>	Steve Findlay
<b>TRIM file ref</b>	2024/312074
<b>Attachments</b>	<a href="#">↓1 Assessment Report</a>
	<a href="#">↓2 Site Plan and Elevations</a>



## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0556
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<b>Responsible Officer:</b>	Kye Miles
<b>Land to be developed (Address):</b>	Lot 58 DP 13620, 989 Barrenjoey Road PALM BEACH NSW 2108 Lot LIC 320226, 989 Barrenjoey Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Modification of Development Consent DA2021/2447 granted for Demolition works and construction of a dwelling house including a swimming pool
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Michele Lynne Southon David John Southon
<b>Applicant:</b>	Mathieson Architects

<b>Application Lodged:</b>	03/11/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	10/11/2023 to 24/11/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 30.5%
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

The application seeks to modify Development Consent No.DA2021/2447 which was granted for demolition works and construction of a dwelling house.

The application is referred to the Development Determination Panel (DDP) due to the proposed increase in the non-compliance with the development standard relating to Building Height under Pittwater Local Environmental Plan 2014. The proposal increases the variation to the height standard

from 22.3% to 30.5%.

The proposed additional non-compliance is largely contained to the western (rear) portion of the building as the land falls away steeply, and will relate to a minor section of the roof form and parapet balcony framing element. These structures are not considered to result in unreasonable impacts to the character of the area or the amenity of adjoining properties.

No submissions were received during the notification of the application.

The modified proposal seeks to increase the extent of the approved "*Subfloor Area*" by 48.9m<sup>2</sup> (153%) and converting this level from a wholly services related area (water tanks, filtration equipment and condensers), into a new habitable floor level labelled the "*Lower Ground Floor*", comprising; a living room, bathroom, laundry, with associated lift and stairs. The significant increase in the size, floor area and extent of excavation to create this level does not satisfy the classification of 'low impact' residential development under the C4 Environmental Living zone, and it does not demonstrate a site response planning outcome when assessed against the approved development and the previously approved excavation. Therefore, it is recommended that a condition be imposed to maintain the originally approved subfloor area to ensure the development is consistent with the zone objectives and to minimise excavation.

Overall, the environmental impacts of the modified proposal will be reasonable within the context and setting, subject to the special condition in relation to the special condition referred to above.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal (as conditioned) is a suitable and appropriate development for the subject site.

Accordingly, it is recommended that the application be **APPROVED** subject to conditions.

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

Modification of Development Consent DA2021/2447. The modifications include:

- Roof alterations above garage and terrace.
- Reduction of lift overrun.
- Reconfigure level 2 floor plan, including, repositioning the gym.
- Raise level 2 parapet to match garage RL.
- Reconfigure level 1 floor plan, including alterations to bedroom layouts.
- New louvered pergola above ground floor terrace.
- Increase width of sunken courtyard.
- Alterations and additions to subfloor to provide lower ground floor with habitable floor space and services.
- Changes to windows and doors as indicated on the elevations.
- Associated landscaping works.

#### **AMENDED PLANS**

During the assessment of the application, amended plans were submitted which deleted portions of the lower ground floor and relocated the water tanks externally. The application has been assessed based off these amended plans.

In accordance with Northern Beaches Community Participation Plan, amendments which have a reduction of impact or minimal environmental impact to do have to be formally re-notified. It is

considered the proposed amendments would have an overall reduction of impact.

**ASSESSMENT INTRODUCTION**

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

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

**SUMMARY OF ASSESSMENT ISSUES**

- Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
- Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
- Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
- Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
- Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill
- Pittwater 21 Development Control Plan - D12.5 Front building line
- Pittwater 21 Development Control Plan - D12.8 Building envelope
- Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot 58 DP 13620 , 989 Barrenjoey Road PALM BEACH NSW 2108 Lot LIC 320226 , 989 Barrenjoey Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	The subject site consists of one (1) allotment located on the western side of Barrenjoey Road, Palm Beach.  The site is irregular in shape with a frontage of 26.54m along Barrenjoey Road and a variable depth of between 25.91m and 24.6m. The site has an irregular frontage to Pittwater Waterway as established by the Mean High Water Mark (MHWM). The site has a surveyed area of 682m <sup>2</sup> .  The site is located within the C4 Environmental Living zone and accommodates a one / two storey clad dwelling

house with pitched and tiled roof located adjacent to the Barrenjoey Road frontage. A brick garage with a pitched and tile roof is located partly on the site and partly within the adjacent road reserve with a series of retaining walls providing for informal landscaping within the road reserve, down the southern boundary of the property and within the foreshore setback area. A concrete terrace and timber jetty is located adjacent to the foreshore frontage and extends below MHWL.

The site is relatively steep falling approximately 19m (16.7 degrees/ 30% slope), across its surface in a westerly direction and contains a number of mature trees. The site is mapped as Geotechnical Hazard H1 and Bush Fire Prone Land (Vegetation Buffer).

**Detailed Description of Adjoining/Surrounding Development**

The site is bound by residential development to the north-west, Pittwater to the south-west, a reserve for drainage and access to the south-east and retaining walls supporting Barrenjoey Road to the north-east.

To the north-west, the adjoining property is occupied by a brick garage extending to the boundary and a single storey rendered house that has been partly demolished. The survey drawing denoted the house as a 'dilapidated building'. Both structures appeared to be in poor condition. At the southwestern end is a clad boat house that is set-back about 6m. The property has a similar landform to that of the site and slopes down to Pittwater at between about 50° and 60°. There is also a high bedrock cliff-line above the boat house which appears to be sandstone bedrock.

To the south-west is Pittwater. At the northern end of the seawall, sandstone bedrock is outcropping below sea level. Sand is exposed beyond the seawall over the remainder of the length of the seawall. To the south-east, ground levels in the public reserve are like the subject site. Between the site and Barrenjoey Road ground levels step up about 2.5m. This change in elevation is supported by batter slopes that have been formed at between 30o to 50o and have irregular sandstone facing protecting an inferred soil batter. The crest of the upper of these batter slopes is set-in about 1.5m to 2m from the kerb and gutter of Barrenjoey Road.

Map:



#### **SITE HISTORY**

##### **N1172/99**

Development application for a floating ramp extension of existing private jetty with two treated timber restraining piles approved on 21 December 1999.

##### **PLM2021/0216**

Pre-lodgement meeting held on 2 September 2021 to discuss the demolition of existing structures and construction of new dwelling, boatshed, and swimming pool at 989 Barrenjoey Road, Palm Beach. In summary, the proposal in its preliminary form could not be supported.

##### **DA2021/2447**

Development application for demolition works and construction of a dwelling house was approved by the Northern Beaches Local Planning Panel on 31 August 2022. However, approval was granted with a condition to remove the tunnel, swimming pool, and works adjoining and within the foreshore area, as the Panel determined that these elements were not adequately integrated into the landform and landscape.

##### **DA2023/0781**

Development application for alterations and additions to a dwelling house including a swimming pool. This application was approved on 21 August 2023 under staff delegation.

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

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated

- regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2021/2447, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/2447 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The approved use remains unaltered.</li> <li>• The building form as conditioned remains generally consistent with the approved outcome.</li> <li>• The modifications as conditioned to do give rise to any adverse environmental impacts.</li> <li>• From qualitative and quantitative perspectives, the proposal will not be significantly altered by the proposed modifications.</li> </ul>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2021/2447 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental

Section 4.55 (2) - Other Modifications	Comments
(i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

**Section 4.15 Assessment**

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 'Matters for Consideration'	Comments
<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&amp;A Regulation 2021)</p>	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 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 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 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>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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<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.</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 &amp; 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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire cover letter was submitted with the application (prepared by Building Code & Bushfire Hazard Solutions Pty Limited, dated 21 September 2023). The letter stated that the recommendations within the previous Bushfire Assessment Report remain valid for the modified works.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the original Bush Fire Report, and conditions from the NSW RFS remain unaltered by this modification.

**NOTIFICATION & SUBMISSIONS RECEIVED**

The subject application has been publicly exhibited from 10/11/2023 to 24/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

**REFERRALS**

Internal Referral Body	Comments
Landscape Officer	<p><b>Supported, no conditions</b></p> <p>The application is for modification to development consent DA2021/2447 and the following landscape matters are identified on plans and reports: the proposed landscape within the public road reserve is amended to include a clear 3 metre zone from the back of kerb; and a arboricultural report is submitted advising that the modification works do not impact upon existing trees.</p> <p>Landscape conditions 8, 9, 28, 29, 36 49, 50, and 59 under the development consent remain.</p>
NECC (Bushland and Biodiversity)	<p><b>Supported, no conditions</b></p> <p>The applicant has submitted an additional arborist report which has assessed that the new design will have minimal impact/s on the surrounding trees to ensure their retention.</p> <p>Therefore the proposed modifications are considered unlikely to increase impacts to biodiversity values or the ecological values of the coastal environment area.</p>
NECC (Coast and Catchments)	<p><b>Supported, no conditions</b></p> <p>The proposal seeks approval for modification of development consent DA 2021/2447 granted for construction of a new dwelling house.</p>

Internal Referral Body	Comments
	<p>The proposed modifications predominately involve a general refinement in the detailing of the including a rationalisation in the roof design, internal layout changes to enhance internal layout efficiencies, fenestration changes and the augmentation of floor space at lower ground floor level. Additional privacy and sun protection measures are also proposed. relate to landscaping treatments, new swimming pool and external stair connections.</p> <p>The subject property is located within the 'Coastal Environment Area' and the 'Coastal Use Area' maps of the Coastal Zone. In addition, the subject property is affected by estuarine hazard. Part of the subject property is also within the 'Foreshores Building Line'.</p> <p>This application was assessed in consideration of:</p> <p>Supplied plans and reports, including;</p> <ul style="list-style-type: none"> <li>• Statement of Environmental Effects prepared by BBF Town Planners Pty. Ltd. dated 9 October 2023</li> <li>• Coastal Management Act 2016</li> <li>• State Environmental Planning Policy (Resilience &amp; Hazards) 2021</li> <li>• Relevant LEP and DCP Clauses</li> </ul> <p>The objectives and requirement of the CMA 2016, SEPP -R &amp; H 2021 and relevant LEP and DCP Clauses have been met.</p> <p>The proposed modifications appear consistent with the design intent of the original proposal and fulfills the objectives and requirements of the relevant clauses of the Act, SEPP, LEP and DCP.</p> <p>No conditions in additions to those for the original development application are considered necessary.</p>
NECC (Development Engineering)	<p><b>Supported, with conditions</b></p> <p>The proposed modification has included the conditioned setback in the road reserve. The updated Geotechnical report addresses the relevant DCP controls. The proposal does not alter the original vehicular access or stormwater management system.</p> <p>Development Engineering support the proposal, subject to the modification to conditions 1a) and 11 of consent DA2021/2447 to reflect the updated Geotechnical report prepared by JK Geotechnics, Ref: 34271Yrpt4, dated 26 September 2023.</p>
NECC (Riparian Lands and Creeks)	<p><b>Supported, no conditions</b></p> <p>This application was assessed in consideration of:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021;</li> <li>• Water Management Act 2000;</li> <li>• Water Management (General) Regulation 2018;</li> <li>• Northern Beaches Water Management for Development Policy</li> <li>• Relevant LEP and DCP clauses; and</li> </ul> <p>The site abuts Pittwater estuary and so must not significantly impact on the biophysical, hydrological or ecological integrity of the estuary, or the quantity and quality of surface and ground water flows that it receives.</p> <p>In the Statement of Environmental Effects, it is stated that the previously approved landscaping and stormwater disposal regimes are not altered as a consequence of the modifications sought. On this basis and review of the proposed modifications, no objections provided conditions are adhered to.</p>
Road Reserve	<p><b>Supported, no conditions</b></p> <p>The 3m clear verge is noted following comments on earlier DA's by the Road Assets Team</p> <p>Council Development Engineering team to ensure a Roads Act Application for Civil Works is to be lodged with appropriate engineering details of retaining walls and landscaping on the road reserve.</p>
Traffic Engineer	<p><b>Supported, no conditions</b></p> <p>The proposed amendments under the modification do not result in any new traffic or parking concerns and there are no traffic issues preventing approval and no new traffic conditions to impose</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b>Supported, no changes to approved conditions</b></p> <p>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.</p>
Rural Fire Service - Local Branch - EP&A Act, s4.14	<p><b>Supported, no conditions</b></p> <p>The site is mapped as Category 1 Vegetation. In accordance with section 4.14 of the Environmental Planning and Assessment Act 1979 the modification was referred to the New South Wales Rural Fire Service (NSW RFS) who offer no objections or additional</p>

External Referral Body	Comments
	conditions.
Aboriginal Heritage Office	<p><b>Supported, no changes to approved conditions</b></p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>
Roads and Maritime Service - Roads Act 1993, s138 (Non-integrated)	<p><b>Supported, no conditions</b></p> <p>The application was referred to Transport for NSW (TfNSW) for concurrence under Section 138 of the Roads Act 1993. Following a review of the submitted application, TfNSW noted that its concurrence under Section 138 of the Roads Act 1993 was not required, as the modification application proposes no changes to the vehicular crossing and stormwater infrastructure on Barrenjoey Road.</p>

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

All, Environmental Planning Instruments (SEPPs 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 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 (Sustainable Buildings) 2022**

A BASIX certificate has been submitted with the application (see Certificate No. 1247794S\_02 dated 6 September 2023).

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

## SEPP (Transport and Infrastructure) 2021

### Ausgrid

Section 2.48 of Chapter 2 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.

### Transport for NSW (TfNSW)

Section 2.119 - Development with frontage to classified road states:

*The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*

- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
- (i) *the design of the vehicular access to the land, or*
  - (ii) *the emission of smoke or dust from the development, or*
  - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land,*
- and*
- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

### Comment:

The modification application was referred to TfNSW, which confirmed that concurrence under Section 138 of the Roads Act is not required for the proposed changes. Please refer to the Referrals Section of this report for further details.

Section 2.120 - Impact of road noise or vibration on non-road development states:

- (2) *Before determining a development application for development to which this clause applies, the*

*consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.*

*(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—*

*(a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*

*(b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

Comment:

The modifications are not expected to increase the impact of road noise or vibration since the noise-sensitive habitable rooms remain substantially below street level, as originally approved.

## **SEPP (Resilience and Hazards) 2021**

### **Chapter 2 – Coastal Management**

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

#### **Division 3 Coastal environment area**

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

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

Comment:

The modified proposal as conditioned is not likely to cause an adverse impact upon the matters identified in this clause. The proposed works do not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

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

Comment:

Council is satisfied the modified proposal as conditioned is designed, and can be managed, to avoid adverse impacts based upon the matters identified in this clause.

**Division 4 Coastal use area**

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

Comment:

The modified development is not likely to cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunnelling or unreasonable impact on the loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, will be preserved in accordance with the approved outcome. The proposal will also not have an adverse impact on the cultural and built environment heritage.

It is considered that the proposed development has satisfied the requirement to be designed, sited and will be managed to avoid an adverse impact to the aforementioned cultural and environmental aspects.

Furthermore, the modified development is considered to be of an acceptable bulk, scale and size that is generally compatible with the surrounding coastal and built environment, which consist of low-density residential dwellings and ancillary structures.

**Division 5 General**

**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:

Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land. The application has been reviewed by Council's Coast and Catchment Officer who has raised no objection to the works.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

**Pittwater Local Environmental Plan 2014**

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	*8.5m	10.4m	11.1m (Gym roof)	30.5%	No

\*See comments in part 4.3 of this report.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
5.10 Heritage conservation	Yes



Clause	Compliance with Requirements
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes

Detailed Assessment

**Zone C4 Environmental Living**

In considering if Council is to grant development consent, it must be considered if the proposal is consistent with the C4 Environmental Living Zone objectives, which are the following:

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

Comment:

The modification, which more than doubles the approved subfloor area (153.2% or 48.9m<sup>2</sup>), includes the addition of new habitable floor space, a laundry, internal access, and additional services. This expansion is not deemed 'low impact' residential development, nor is it considered site-responsive when assessing the entirety of the proposal alongside the previously approved excavation. Therefore, it is recommended that a condition be imposed to maintain the originally approved subfloor area and ensure the development aligns with the approved outcome.

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

Comment:

As above, the excavation as proposed will permanently alter the natural form of the land, which is inconsistent with the expectation that residential development be consistent with a 'low-impact' and more site responsive approach to development in the C4 Zone. In this regard, a suitable condition is recommended to minimise site disturbance to ensure the development maintains an appropriate response to the site.

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

Comment:

The additional excavation for the lower ground floor does not reflect an integration with landform, when such excavation is not essential or necessary for the provision of a dwelling house on this waterfront site. In this regard, it is recommended that the subfloor area remains as approved.

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

Comment:

The proposal results in slight increase in landscape area and as such, encourages enhancement of foreshore vegetation.

The modification as conditioned is considered to be consistent with the C4 Zone objectives and therefore, it is recommended that consent only be granted subject to the conditions attached to this report.

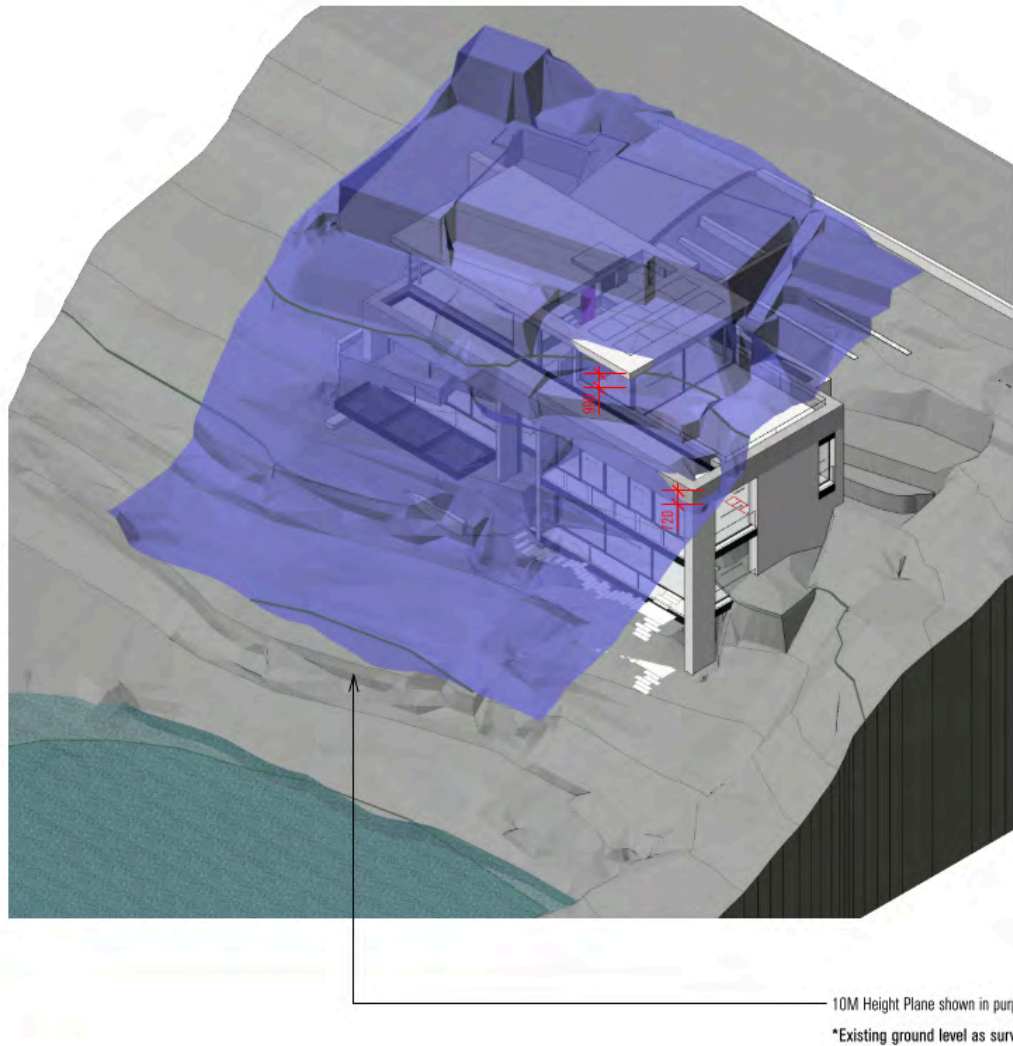
#### 4.3 Height of buildings

Clause 4.3 2D allows a concessional height up to 10.0 metres where the buildings footprint is situated on a slope that is in excess of 16.7 degrees (30%) and subject to compliance with the objectives of the clause.

The approved building footprint is situated on a slope of approximately 38%. Notwithstanding, the maximum height of the dwelling within the original Development Application (DA2021/2447) was **10.4 metres** exceeding concessional height limit for slope affected sites. This breach related to the south-western portion of the development.

The proposed modification involves rotating the Level 2 gym and roof by 90 degrees, extending to the west (down-slope), which results in a technical height breach. The proposed height of the modified proposal is as follows:

- The proposed modifications will extend the proposed roof to the west (down-slope) by 3.6 metres. This will result in the proposed roof over the level 2 gym having maximum height of 11.0 metres. This is depicted in Figure 1 below.
- Modifications are proposed to the parapeted balcony framing element to increase this by 0.7 metres. This will result in the southwest corner having maximum height of 10.7 metres. This is depicted in Figure 1 below.



**Figure 1: Height blanket diagram showing the proposed building height breaching elements above the 10.0 metre height plane (source: Mathieson)**

**Assessment of Request to Vary a Development Standard**

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Pittwater LEP 2014, the application does not strictly need to address the requirements of Clause 4.6 of PLEP 2014.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the C4 Environmental Living zone.

The underlying objectives of the standard, pursuant to *Clause 4.3 – ‘Height of buildings’* of the PLEP 2014 are:

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

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

Comment:

As discussed throughout this report, the proposed changes subject of this modification represent a relatively minor change in built form and the amended scheme as conditioned is considered to maintain consistency with the intent of the Palm Beach Locality Statement. The vast majority of the proposal will remain below the height of building requirement. The proposed height non-compliance is largely contained to the south-western portion of the building as the land falls away, and will relate to a minor section of the roof form and balcony framing element. The modified development proposes to maintain a similar building footprint as to that approved. The approved rear setback and vegetation buffer is retained to provide visual relief towards the adjoining waterway. As such, the building height breach is not considered to impact on the desired character of the locality.

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

Comment:

The development is located on the downward slope of Barrenjoey Road, which is characterised by undulating topography. This results in variable built forms along the road, such that there is an eclectic mix of height and scale in which to be compatible with. The non-compliance is contained to the western extremity of the new roof due to the topographical nature of the site. The non-compliance is considered to be relatively minor and does not unreasonably conflict with the height and scale of surrounding and nearby development. In this context, the proposed height non-compliance is considered to be compatible.

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

Comment:

The submitted shadow diagrams demonstrate that the building height breaching elements will not contribute to unreasonable shadow impact on neighbouring properties. This further detailed in the section of this report relating to *Section C1.4 Solar Access* of the P21 DCP.

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

Comment:

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to *Clause C1.3 View Sharing* of the P21 DCP. Given associated level differences of the nearby built form, existing views and vistas are anticipated to be equitably retained.

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

Comment:

As discussed throughout this report, the proposed changes as conditioned do not result in additional excavation, ensuring that the proposal sensitively responds to the natural topography. The variation to the height control occurs as a result of the siting of the approved dwelling in conjunction with the sloping topography of the site. The proposal reflects the established built form character of newer dwellings located along Barrenjoey Road where multi-level, variably stepped houses are prevalent, due to the steep topography of the land.

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

Comment:

The proposed works will maintain consistency with the general height and scale of surrounding newer development, and further, the bulk and scale of the works are minimised as a result of the setbacks, modulation of the facades, the use of materials and design of the varied roof form. Proposed landscaping, in conjunction with required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. The proposal as conditioned will not require the removal of any significant vegetation or require any significant site disturbance or excavation to facilitate additional floor area. No heritage conservation areas or heritage items will be affected as a result of this application.

## **Zone Objectives**

The underlying objectives of the C4 Environmental Living Zone are:

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

Comment:

The modification remains to be a low-density development that generally sits within the footprint of the existing dwelling. The proposed changes do not require the removal of any high value significant trees or natural features that have ecological and / or aesthetic values. The dwelling sits within a landscaped setting below the tree canopy. The two minor areas of height breach will not in isolation compromise the ability of the site to meet this objective as they do

not contribute to an adverse impact on the ecology, scientific, or aesthetic values of the site.

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

Comment:

For the reasons discussed above, despite the three areas of height breach the proposed development will have no adverse effect on the environmental or aesthetic values of the site.

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

Comment:

The modified dwelling as conditioned represents a low-density development that steps down the site to integrate into the landform.

As discussed above, the bulk and scale of the dwelling is comparable to other similar developments in the locality and will be softened with the retention of existing mature canopy trees and additional landscaping when viewed from Pittwater Waterway. Given the topography of the steeply sloping site (30% slope), the dwelling generally sits below the 8.5m max height limit and presents a low-scale single storey garage/ gym pavilion to the street. The ancillary elements that in breach the height limit will not prevent the development meeting this objective.

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

Comment:

The proposed elements that breach the height limit do not in isolation require the removal of any trees or vegetation. The proposal will not impact on wildlife corridors and Council's Biodiversity Unit offer no objections to the proposal subject to condition.

## 7.2 Earthworks

The objective of Clause 7.2 - 'Earthworks' requires development 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.

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 of the development*

Comment: Council's referral officers (engineers, riparian and creeks, coast and catchment) consider that 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. The land is most likely to be maintained for residential purposes into the future.

*(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. Fill is not required to be brought onto the site.

*(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. Drainage can be dealt with via conditions if consent were to be granted. Conditions could be included if consent were to be granted 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. Fill is not required for the proposal.

*(f) the likelihood of disturbing relics*

Comment: The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

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

Comment: Impacts to the waterway could be managed via conditions if consent were to be granted.

*(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: Conditions could be implemented that would minimise the impacts of the development, should consent be granted.

*(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.*

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the specific requirements of Clause 7.2 of the Pittwater LEP 2014, however the extent of excavation for the lower ground floor is considered to be excessive, unnecessary in terms of the provision of a dwelling house on this sensitive waterfront property and is not supported.

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front Building Line	10.0m	1.0m - 4.3m (Dwelling)	1.4m - 4.7m (Dwelling)	No
Side Building Line	2.5m	North - 2.5 m	No change	N/A

	1.0m	South - 1.0m	No change	N/A
Building Envelope	3.5m	North - Outside envelope	Outside envelope	<b>No</b>
	3.5m	South - Outside envelope	Outside envelope	<b>No</b>
Landscaped Area	60%	49% (336sqm, inclusive of 6% variation)	49.7% (339.1sqm, inclusive of 6% variation)	<b>No</b>

Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	No	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment



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

The desired future character (DFC) statement of the Palm Beach Locality states that *"The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land."*

Whilst it is recognised that the approved development consists of a three (3) storey residential dwelling with a deficient quantum of landscaping and there are also surrounding buildings in the area that are three storeys, the proposal will result in a building that further departs from this DFC statement. Notably, the addition of a fourth storey, and excessive excavation required to facilitate this level.

As such, the proposal does not address the DFC in a satisfactory way and the new works will result in a development that is a greater departure from the character outcome that envisaged under the DFC statement.

For this reason, it is recommended that a condition be imposed to maintain the originally approved subfloor area and ensure the development aligns with the DFC.

#### **B8.1 Construction and Demolition - Excavation and Landfill**

The listed Outcomes of *Clause B8.1 Construction and Demolition - Excavation and Landfill* are as follows:

- *Site disturbance is minimised.*
- *Excavation, landfill and construction not to have an adverse impact.*
- *Excavation and landfill operations not to cause damage on the development or adjoining property.*

#### Comment:

The modification, which more than doubles the approved subfloor area (153.2% or 48.9m<sup>2</sup>), includes the addition of new habitable floor space, a laundry, internal access, and additional services. The proposed excavation volume is considered to be excessive and does not minimise disturbance of the site. In this regard, a suitable condition is recommended to minimise site disturbance to ensure the development maintains an appropriate response to the site.

As such, the proposal as conditioned is found to be consistent with the Outcomes of the control.

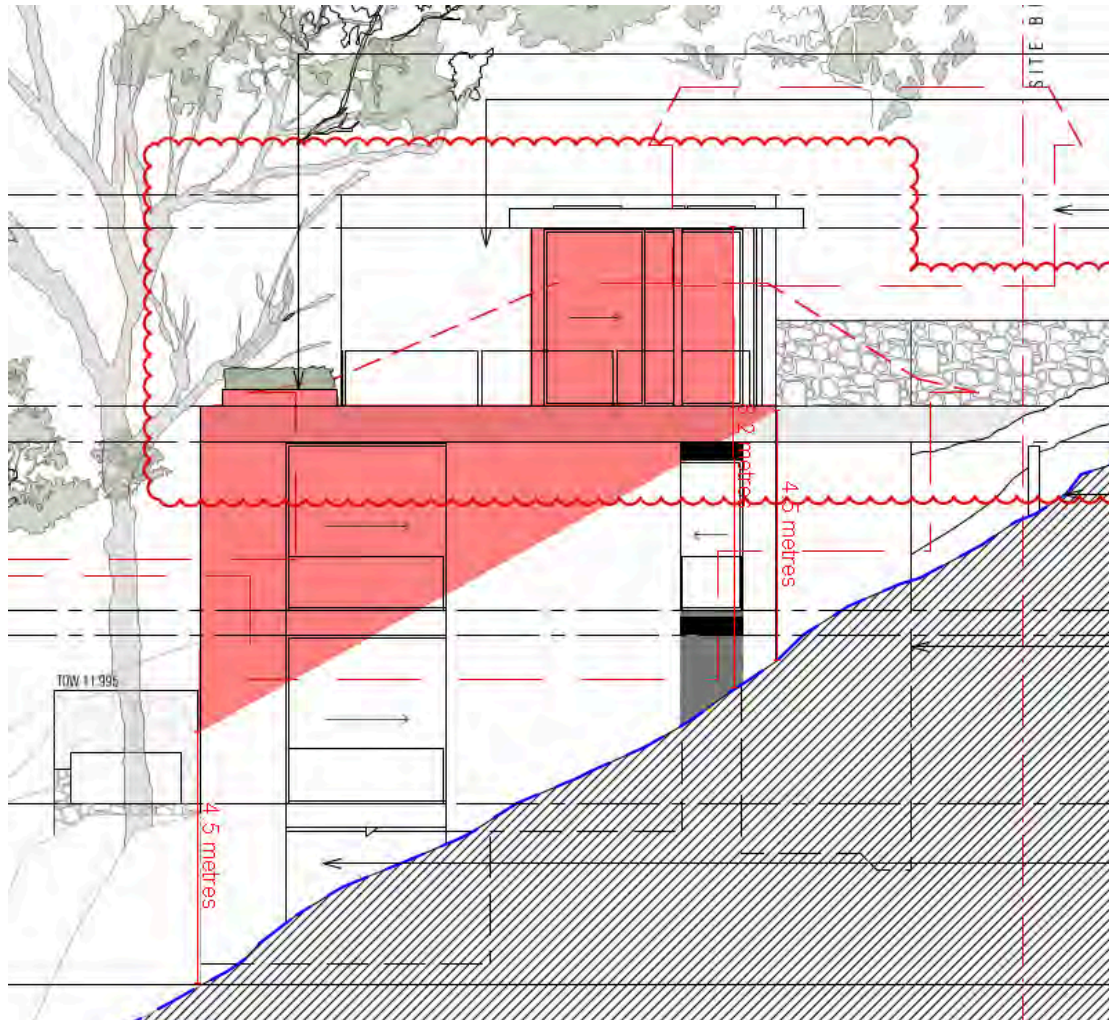
#### **D12.5 Front building line**

The proposed modification works will slightly increase the non-compliant front setback previously approved under the original development application by 0.3 metres. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

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

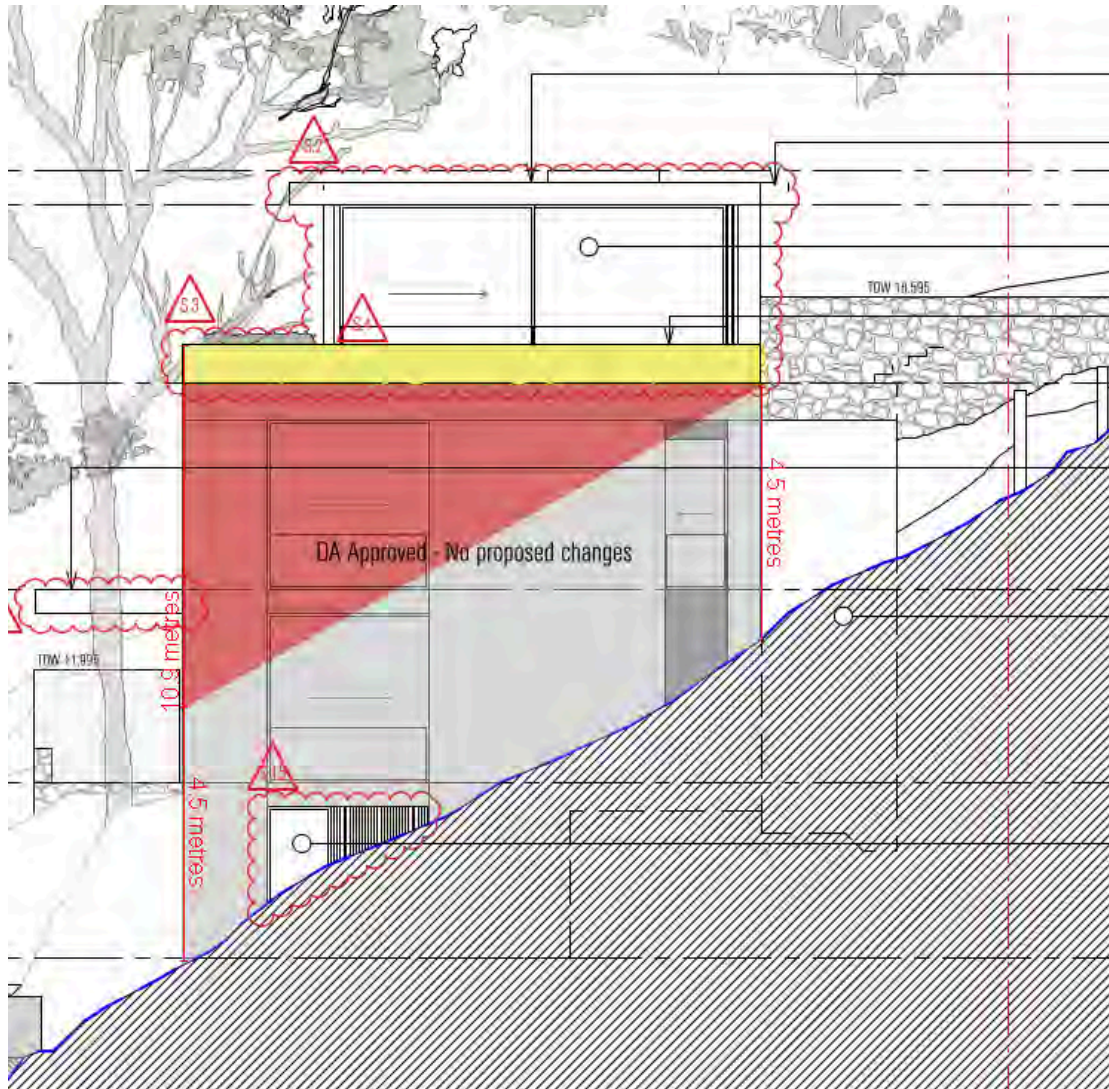
The proposed modification would remove the Level 2 breach to the building envelope on the southern elevation. This breach relates the Level 2 gym, which is proposed to be repositioned and provide a greater souther side setback. However, the modification would result in a minor additional breach to the

approved Level 1 breach, as the modification proposes to increase the parapeted balcony framing element by 0.7 metres.



**Figure 2: Approved southern building envelope non-compliance (source: Mathieson)**

The approved envelope breach on the northern elevation would remain unaltered from the proposed modifications. The proposed envelope non-compliance (subject of this modification) is represented in yellow on the figure below:



**Figure 3: Proposed southern building envelope non-compliance (source: Mathieson)**

Overall, it is considered that the minor additional breach in building envelope is not considered to result in unreasonable impacts to the character of the development as viewed from the street and would not result in unreasonable amenity impacts to the adjoining neighbour. The envelope breach would be a direct result of existing built form and the significant slope of the site. Therefore, a variation to the control can be considered in this circumstance given the minimal impacts the variation presents in terms of amenity and visual impact from the streetscape.

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

The proposed modification works will increase the amount of landscaped area compared to the approved development by 3.1m<sup>2</sup>. Due to this increase, it is considered the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

**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 2022**

Section 7.12 contributions were levied on the Development Application.

#### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

#### **PLANNING CONCLUSION**

The application seeks to modify Development Consent No.DA2021/2447 which was granted for demolition works and construction of a dwelling house.

The application is referred to the Development Determination Panel (DDP) due to the proposed increase in the non-compliance with the development standard relating to Building Height under



Pittwater Local Environmental Plan 2014. The proposal increases the variation to the height standard from 22.3% to 30.5%.

The critical assessment issues are; the building height breach, the extent of additional excavation to create the Lower Ground Floor level, and consistency with the C4 Environmental Living zone objectives and the Palm Beach Character Statement.

The assessment has determined that the non-compliant height is a consequence of the site's context and relates to a reconfiguration of the approved built form, which is assessed as being satisfactory and supported.

However, the excessive nature of the new lower ground floor excavation is not consistent with the objectives of the C4 zone, particularly in relation to being "low impact". The proposal does not demonstrate that it is site responsive, nor that excavation has been minimised, especially when compared against the approved development. Therefore, it is recommended that a condition be imposed to maintain the originally approved subfloor area, such that it is maintained as an ancillary "services" level and to ensure the modified development is consistent with both the approved development and the C4 zone objectives.

Subject to the conditions as recommended, it is considered that the modified proposal is satisfactory.

Accordingly, the application is referred to the DPP with a recommendation 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 Council as the consent authority grant approval to Modification Application No. Mod2023/0556 for Modification of Development Consent DA2021/2447 granted for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 58 DP 13620,989 Barrenjoey Road, PALM BEACH, Lot LIC 320226,989 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

**Modification Summary**

The development consent is modified as follows:

**MODIFICATION SUMMARY TABLE**

Application Number	Determination Date	Modification description
PAN-378880 - Mod2023/0556	The date of this notice of determination	Modification of Development Consent DA2021/2447 granted for Demolition works and construction of a dwelling house including a swimming pool <ul style="list-style-type: none"> <li>• <b>Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation</b></li> </ul>

		<ul style="list-style-type: none"> <li>• <b>Modify Condition No.11 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans</b></li> <li>• <b>Add Condition Condition No. 18A - Amendments to the approved plans</b></li> </ul>
--	--	---

**Modified conditions**

**A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

<b>Approved Plans</b>				
<b>Plan Number</b>	<b>Revision Number</b>	<b>Plan Title</b>	<b>Drawn By</b>	<b>Date of Plan</b>
S455.02	B	Site Plan	Mathieson	29 August 2023
S455.03	B	Level 2	Mathieson	29 August 2023
S455.04	B	Level 1	Mathieson	29 August 2023
S455.05	B	Ground Floor Plan	Mathieson	29 August 2023
S455.07	B	Elevation North & South	Mathieson	29 August 2023
S455.08	B	Elevation East & West	Mathieson	29 August 2023
S455.09	B	Section AA & BB	Mathieson	29 August 2023

<b>Approved Reports and Documentation</b>			
<b>Document Title</b>	<b>Version Number</b>	<b>Prepared By</b>	<b>Date of Document</b>
BASIX Certificate	1247794S_02	BCA Energy	6 September 2023
Geotechnical Report	34271YJrpt4	JK Geotechnics	26 September 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

**B. Modify Condition No.11 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans, to read as follows:**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by JK Geotechnics, Ref: 34271YJrpt4, dated 26 September 2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

**Note:** No approved is granted for the tunnel, retaining walls, swimming pool or associated earthworks within and adjacent to the foreshore area.

**C. Add Condition Condition No. 18A - Amendments to the approved plans, to read as follows:**

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

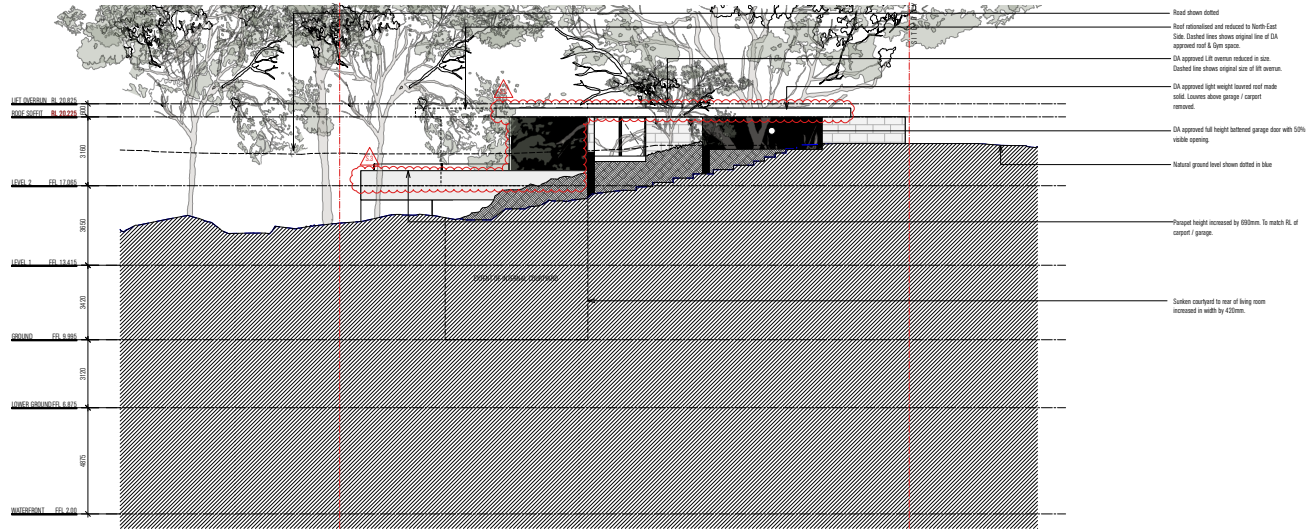
- The lower ground level (Identified as Lower Ground on drawing S455.06) is to be reinstated to as approved in DA2021/2447. For the avoidance of doubt no works to the lower ground are approved under Mod2023/0556.

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

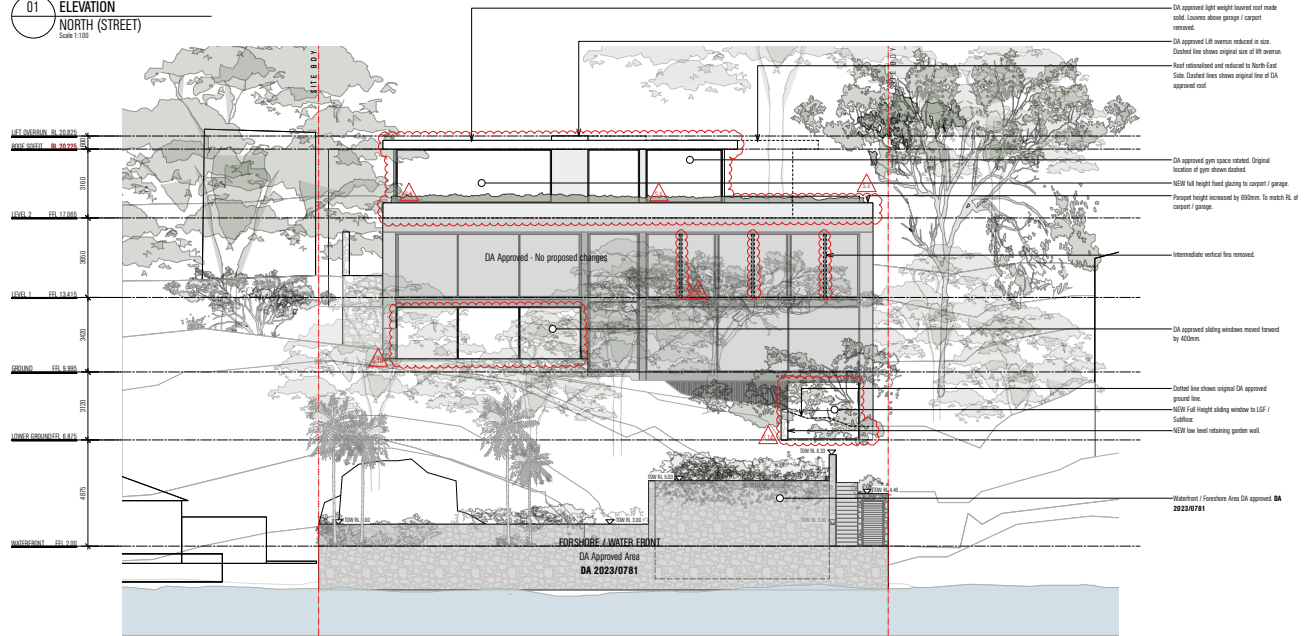
Reason: To ensure development minimises unreasonable impacts upon surrounding land.







**01 ELEVATION NORTH (STREET)**  
Scale 1:100



**02 ELEVATION SOUTH (PITTWATER)**  
Scale 1:100

MATHIESON PROJECTS  
301 THE RESERVE RD, DARYL BLVD, SOUTH COAST NSW, AUSTRALIA  
T +61 2 9396 0100 WWW.MATHIESONPROJECTS.COM

**NOTE:** FOR THE PURPOSES OF CLARIFYING THE RETAINED TREES ARE SHOWN (DOTTED) PLEASE REFER TO TREE STRATEGY DRAWING DA-10 FOR TREES THAT ARE TO BE REMOVED.

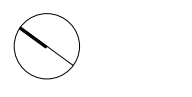


REVISIONS

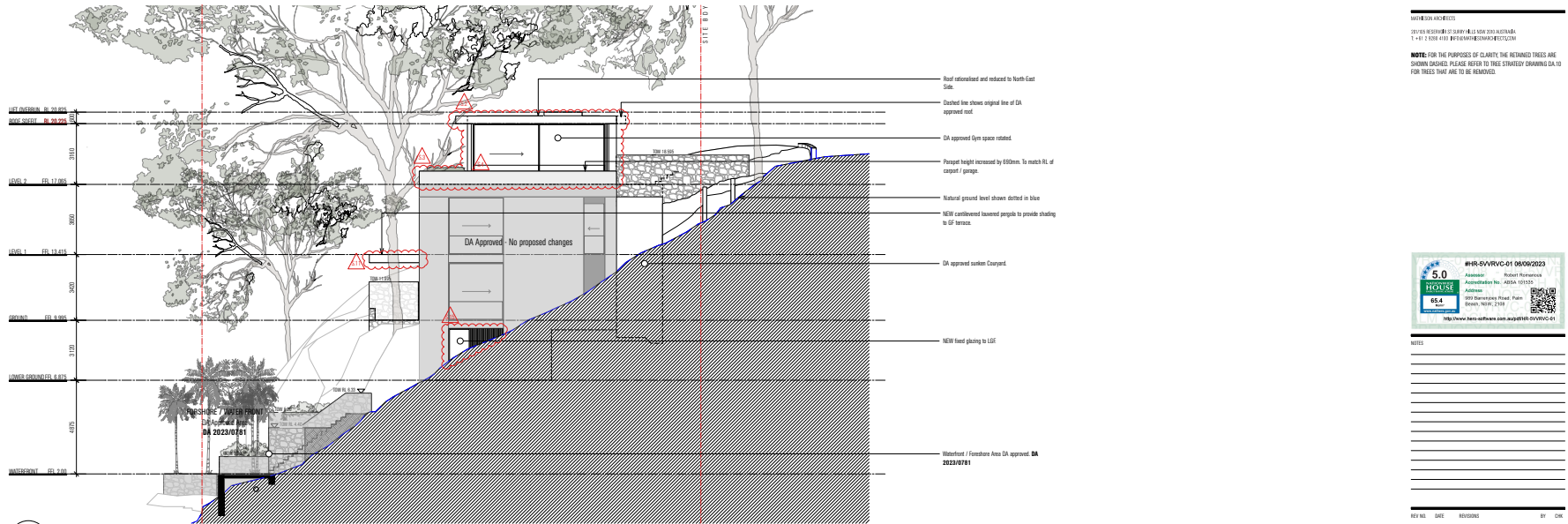
REV NO.	DATE	REVISION	BY	CHK
1	29/08/2023	CLIENT REVIEW	LB	
2	02/09/2023	CAD CORRECT	LB	

PROJECT: SOUTHERN BARRENDEY  
ADDRESS: 989 BARRENDEY ROAD  
PALM BEACH 2108  
DOCUMENT: SECTION 4.55 APPLICATION

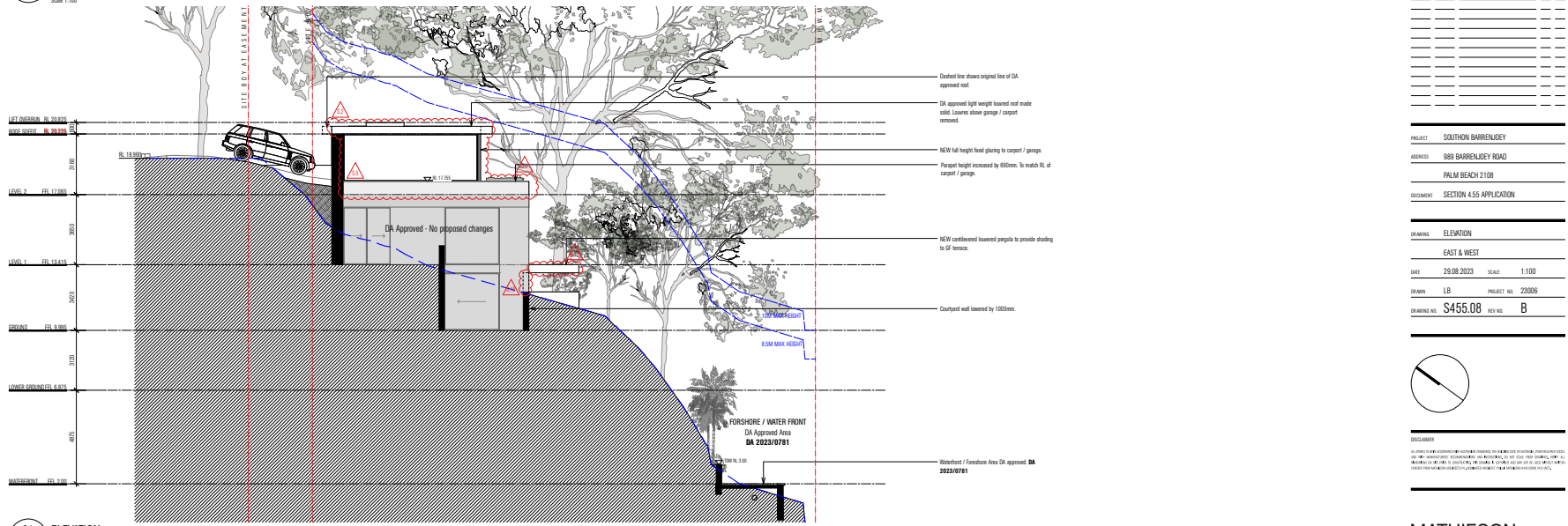
DRAWING: ELEVATION  
NORTH & SOUTH  
DATE: 29.08.2023 SCALE: 1:100  
DRAWN: LB PROJECT NO: 23006  
DRAWING NO: S455.07 REV NO: B



DISCLAIMER  
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02 ELEVATION SOUTH EAST Scale 1:100



01 ELEVATION NORTH WEST Scale 1:100



REVISIONS

REV	NO	DATE	DESCRIPTION	BY	CHK

REV NO	DATE	REVISIONS	BY	CHK
1	2023/02	CLIENT REVIEW	LB	
2	2023/02	CLIENT REVIEW	LB	

PROJECT: SOUTHERN BARRANDEEY  
 ADDRESS: 889 BARRANDEEY ROAD  
 PALM BEACH 2106  
 DOCUMENT: SECTION 4.55 APPLICATION

DRAWING: ELEVATION  
 EAST & WEST  
 DATE: 29.08.2023 SCALE: 1:100  
 DRAWING: LB PROJECT NO: 23006  
 DRAWING NO: S455.08 REV NO: B



DECLARATION

I/WE HEREBY DECLARE THAT I/WE AS ARCHITECTS AND ENGINEERS HAVE PREPARED THIS DRAWING IN ACCORDANCE WITH THE BUILDING ACT 1975 AND THE BUILDING REGULATIONS 2006. I/WE ACCEPT FULL RESPONSIBILITY FOR THE DESIGN AND CONSTRUCTION OF THE WORK SHOWN ON THIS DRAWING. I/WE HAVE TAKEN INTO ACCOUNT THE REQUIREMENTS OF THE BUILDING ACT 1975 AND THE BUILDING REGULATIONS 2006. I/WE HAVE TAKEN INTO ACCOUNT THE REQUIREMENTS OF THE BUILDING ACT 1975 AND THE BUILDING REGULATIONS 2006.

MATHIESON

**ITEM 3.3 DA2023/1843 - 5 BEAUTY DRIVE WHALE BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**

**PURPOSE**

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

**RECOMMENDATION**

THAT Council as the consent authority **approves** Development Consent to DA2023/1843 for alterations and additions to a dwelling house on land at Lot 7 DP 26718, 5 Beauty Drive WHALE BEACH, subject to the conditions set out in the Assessment Report.

<b>Reporting manager</b>	Steve Findlay
<b>TRIM file ref</b>	2024/341710
<b>Attachments</b>	<a href="#">↓1 Assessment Report</a> <a href="#">↓2 Site Plan and Elevations</a>

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1843
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<b>Responsible Officer:</b>	Kye Miles
<b>Land to be developed (Address):</b>	Lot 7 DP 26718, 5 Beauty Drive WHALE BEACH NSW 2107
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Jarrad Earl Robertson Julia Robertson
<b>Applicant:</b>	Julia Robertson Jarrad Earl Robertson

<b>Application Lodged:</b>	02/01/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	12/01/2024 to 26/01/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	5
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 975,315.00
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### EXECUTIVE SUMMARY

This application seeks approval for alterations and additions to a dwelling house, including a first-floor addition. The application has been referred to the Development Determination Panel (DDP) due to the receipt of five submissions during the notification period.

The objections primarily concern views, privacy, built-form non-compliances, traffic, and environmental impacts. Following an initial assessment by Council, amended plans and documentation, including revisions to address these concerns, were submitted. Formal re-notification was deemed unnecessary under the Northern Beaches Community Participation Plan. The submission issues have been

addressed within the assessment report, with some issues addressed via conditions of consent, including, a requirement for the southern terrace balustrade to be made of fixed panels or louver style construction to resolve overlooking issues.

Critical assessment issues include view loss, privacy and non-compliance with the numeric requirements of controls within the Pittwater 21 Development Control Plan, including breaches to the front building line, side and rear building line, building envelope, and landscaped area controls. Non-compliance arises due to the irregular lot shape and the position of the existing dwelling, necessitating variations to facilitate reasonable redevelopment.

Despite these challenges, the proposal has been designed to remain compatible with the existing built form on the site and in the wider locale without the rise of any adverse amenity impacts. The proposal has also been found to have an acceptable impact upon the views and privacy of adjoining properties.

Overall, the proposal as amended provides a highly articulated façade and incorporates architectural measures, such as skewed windows, privacy walls/screens and deep planter boxes to resolve privacy, whilst still allowing coastal views from the subject dwelling.

This report concludes with a recommendation that the DDP grant **APPROVAL** to the application, subject to the attached conditions.

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

The Development Application is for alterations and additions to a dwelling house.

The works comprise:

- Demolition works, including, the removal of roofing and existing deck areas.
- Internal alterations to ground floor, including installation of a kitchenette.
- Construction of first floor addition, including, a master bedroom, office, kitchen, living and dining with a southeast facing terrace.
- Installation of a external lift, providing access from the garage to the first floor.
- Associated landscaping works, including the construction of a access ramp.

#### **AMENDED PLANS**

Following a preliminary assessment of the application, Council issues an RFI to the applicant on 13 March 2024, outlining concerns with the application.

The concerns related to built form non-compliance, amenity impacts and land use categorisation.

The applicant lodged amended plans to address the concerns on 22 April 2024.

The amended plans incorporated the following changes:

- Increase the first floor terrace rear setback (and reduce the overall depth) by 1.1m and incorporate a raised planter within this setback area.
- Retract the terrace roof by 0.9m.
- Splay the office wall and roof to provide a varied setback between 0.9m - 2.0m.

**Community Participation Plan**

The proposed amendments will have a reduced environmental impact on the adjoining properties when compared to the original proposal. Therefore, formal re-notification is not required in accordance with Northern Beaches Community Participation Plan.

**ASSESSMENT INTRODUCTION**

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

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

**SUMMARY OF ASSESSMENT ISSUES**

- Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
- Pittwater 21 Development Control Plan - C1.3 View Sharing
- Pittwater 21 Development Control Plan - C1.5 Visual Privacy
- Pittwater 21 Development Control Plan - D12.3 Building colours and materials
- Pittwater 21 Development Control Plan - D12.5 Front building line
- Pittwater 21 Development Control Plan - D12.6 Side and rear building line
- Pittwater 21 Development Control Plan - D12.8 Building envelope
- Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

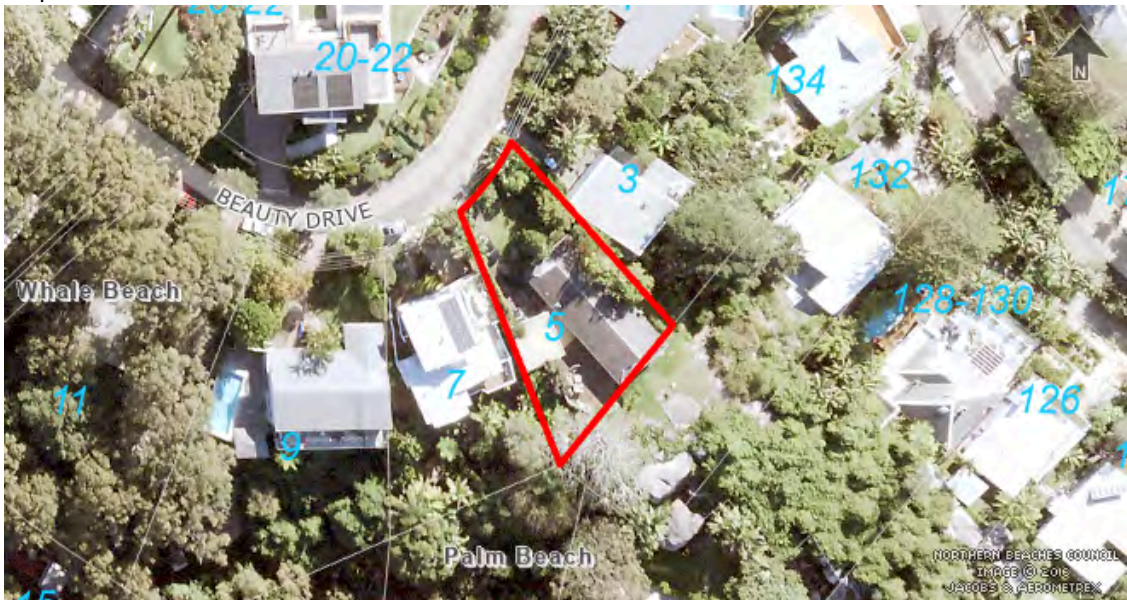
**SITE DESCRIPTION**

<b>Property Description:</b>	Lot 7 DP 26718 , 5 Beauty Drive WHALE BEACH NSW 2107
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Beauty Drive.</p> <p>The site is irregular in shape with a frontage of 11.1m along Beauty Drive and a maximum depth of 41.1m along the western boundary. The site has a surveyed area of 719.6m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living zone</p>



	<p>and accommodates a single storey dwelling a detached garage.</p> <p>The site slopes to the southern boundary with an approximate fall of 8.0m.</p> <p>The site contains large canopy trees, grassed areas and mixed shrubbery.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by detached dwelling houses.</p>
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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.

**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	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no draft instruments that apply to the land.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&amp;A Regulation 2021 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 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 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><b>(i) Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.



Section 4.15 Matters for Consideration	Comments
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 application has been publicly exhibited from 12/01/2024 to 26/01/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mrs Sally Anne Beachley	7 Beauty Drive WHALE BEACH NSW 2107
Mr David John Yuille	18 Beauty Drive WHALE BEACH NSW 2107
Derek Ellis	10 Crane Lodge Place PALM BEACH NSW 2108
Withheld	PALM BEACH NSW 2108
Mrs Emma Jane Snodgrass Mr Duncan Macgregor Snodgrass	1002/425-429 Bourke Street SURRY HILLS NSW 2010

The following issues were raised in the submissions:

- **View loss**
- **Overshadowing**
- **Privacy**
- **Built form non-compliances**
- **Traffic**
- **Environmental impacts**
- **Existing building**
- **Landscaping**
- **Visual impact**

The above issues are addressed as follows:

- **View loss**

The submissions raised concerns that the proposal will result in unacceptable view loss.

Comment:

This issue has been addressed in detail under Clause 'C1.3 View Sharing' in this report. In summary, a view loss assessment, in accordance with the four-part test detailed within *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*, has been undertaken within this assessment report. The views from the affected properties have been described and the impacts assessed. The detailed assessment finds that the extent of view loss arising from the proposed development is considered to range from minor to severe, however, this is considered acceptable within the context of the view sharing principles, given the vulnerability of the impacted views and the proposal's compliance with the relevant controls that have a significant bearing on the maintenance of views.

It is considered that on merit, the issues of view loss or impact does not warrant the refusal of the application.

- **Overshadowing**

The submissions raised concerns that the proposal will give rise to unacceptable overshadowing impacts.

Comment:

An assessment of the application against C1.4 Solar Access of the Pittwater DCP reveals that the application is acceptable with the requisite provisions for solar access and does not unreasonably overshadow adjoining properties. In addition, clear attempts to minimise overshadowing impacts to the concerned properties are evident within the amended proposal's design, as the works sits below the maximum allowable height and provides a suitable building separation.

This matter does not warrant the refusal of the application.

- **Privacy**

The submissions raised concerns that the proposed first floor will result in adverse privacy impacts for the surrounding residents.

Comment:

The above-mentioned privacy impacts have been discussed in further detail in part 'C1.5 Visual Privacy' of this report. In summary, the amended proposal as conditioned will maintain acceptable privacy between buildings and nearby private open space.

This matter does not warrant the refusal of the application.

- **Built form non-compliances**

The submissions raised concerns that the proposal is built above an existing non-compliant structure and seeks to unreasonably intensify these non-compliances.

Comment:

It is acknowledged that the proposal includes built form non-compliances relating to various built form controls of the DCP. It is important to note that Council is required under Section 4.15 of the Environmental Planning and Assessment Act 1979 to be flexible in applying these provisions and to allow reasonable alternative solutions that achieve the objectives of those controls. Therefore, the merits of these non-compliances have been assessed against the objectives of the relevant controls, as outlined later in this report. Specifically, regarding the side and rear setback non-compliances, Part D12.6, which deals with side and rear building lines, allows for variation to the numerical requirements when alterations and additions to existing buildings are proposed. Maintenance of existing setbacks less than as specified may be considered where it is demonstrated that the outcomes of this clause are achieved. In summary, the works are found to be consistent with the objectives of these controls, as the proposal has responded appropriately to the site constraints while remaining compatible with the existing built form and not giving rise to any adverse amenity impacts.

This matter does not warrant the refusal of this application.

- **Traffic**

The submissions raised concerns that the proposal during construction will result in an unacceptable traffic impact.

Comment:

The proposal has been reviewed by Council's Development Engineers, who raised no objections, subject to the recommended conditions of consent, including the requirement of a traffic management plan prior to the commencement of construction.

This matter does not warrant the refusal of this application.

- **Environmental impacts**

The submissions raised concerns that the proposed development will adversely impact surrounding bushland and local fauna.

Comment:

Impacts on the surrounding environment have been assessed by Council's Bushland & Biodiversity Officer (refer to the Referrals section of this report). Their assessment has concluded that the proposed works are satisfactory and will not give rise to any adverse environmental impacts. subject to conditions of consent.

This matter does not warrant the refusal of this application.

- **Existing building**

The submissions raised concerns with the approval of the existing building and associated

structures.

Comment:

A review of Council's historical records indicate that the existing building was granted approval prior to the 1970s via Development Consent BA1319/69. Matters regarding the ground floor deck in the rear setback have been referred to Council's Compliance department for further investigation (BLD2024/00958).

This matter does not warrant the refusal of this application.

- **Landscaping**

The submissions have requested screen planting along the western common boundary.

Comment:

The proposal does not involve substantial landscaping works across the site and the quantum of landscape area is considered appropriate within the context of the site. Therefore, additional screen planting along the western common boundary is not required in this instance.

This matter does not warrant the refusal of this application.

- **Visual impact**

The submissions raised concerns with the proposed development will result in an adverse visual impact.

Comment:

Notwithstanding detailed discussions on the scale of the development (which is found to be commensurate to the lot size and surrounding developments) elsewhere in this report, it is considered that the amended proposal is adequately articulated to mitigate bulk and scale impacts and sits within a landscaped setting, which is integrated and designed to respect the natural site features. Of note, the amended proposal involves increasing the western side setback, which, will assist in reducing the impact of the built form and softening the appearance of the works when viewed from the adjoining property. Overall, the proposal is of an acceptable design when considering the site constraints and the existing built form.

This matter does not warrant the refusal of this application.

**REFERRALS**

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p><b>Supported subject to conditions</b></p> <p>Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable provisions:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• NSW Biodiversity Conservation Act 2016 and NSW Biodiversity Conservation Regulation 2017</li> <li>• Pittwater LEP 2014 cl. 7.6 Biodiversity Protection</li> <li>• Pittwater 21 DCP cl. B4.6 Wildlife Corridors</li> </ul> <p>The Development Application seeks consent for alterations and additions to a dwelling house.</p> <p>A portion of the site is identified on the NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act 2016, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). As the proposed development is not located within the BV Map, and the proposal does not require the removal of native vegetation, the BOS is not triggered and a BDAR is not required.</p> <p>The Architectural Plans (Bones Studio, 30th November 2023) and Statement of Environmental Effects (Northern Beaches Planning, December 2023) were reviewed as part of the assessment. No native vegetation or trees are proposed for removal as a result of the proposed development, nor will it impact upon vegetation located within the BV Map.</p> <p>No objections in relation to biodiversity, subject to conditions.</p>
NECC (Development Engineering)	<p><b>Supported subject to conditions</b></p> <p>The proposed development is on a Low Level Property. Conditions will be provided to ensure compliance with Councils Water Management for Development Policy. A geotechnical report has been provided. Vehicle crossing construction is not proposed. I have no objections to the proposed development.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b>Supported subject to conditions</b></p> <p>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.</p>

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

All, Environmental Planning Instruments (SEPPs 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 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 (Sustainable Buildings) 2022**

A BASIX certificate has been submitted with the application (see Certificate No. A509300\_03 and 19 April 2024).

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

#### **SEPP (Transport and Infrastructure) 2021**

##### Ausgrid

Section 2.48 of Chapter 2 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.

#### **SEPP (Resilience and Hazards) 2021**

##### **Chapter 2 – Coastal Management**

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

##### **Division 4 Coastal use area**

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

Comment:

The works are confined to private property and will not preclude access to or along the foreshore area. In addition, the development will not result in overshadowing or wind funnelling of the adjacent foreshore area. The proposal is not considered to unreasonably impact the visual amenity of the area as the site remains dominated by landscaping, ensuring the proposal integrates well into the landform and landscape. Overall, the bulk, size and scale of the proposal is commensurate with other low density residential development along Beauty Drive and the proposal will not be out of keeping with this coastal setting.

**Division 5 General**

**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:

It is not foreseen that the works would cause an increased risk of coastal hazards on the site itself or other land.

**2.13 Development in coastal zone generally—coastal management programs to be considered**

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

Not applicable.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

**Pittwater Local Environmental Plan 2014**

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	8.4m	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

**Zone C4 Environmental Living**

The underlying objectives of the C4 Environmental Living zone are:

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



Comment:

The proposed development does not give rise to any unreasonable environmental impacts and maintains consistency with both the existing and desired future character of the Palm Beach Locality and the streetscape. The proposed development will sit harmoniously on the site and in its wider context, noting that it is positioned in a disturbed part of the site.

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

Comment:

The proposed development will not have any adverse impacts upon the special values of the site. Specifically, the proposal as amended does not result in any adverse impacts upon the surrounding natural environment, with minimal site disturbance and no vegetation removal. Furthermore, the visual impact of the development remains minimal, with appropriate articulation to ensure that the dwelling remains secondary to landscaping.

- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*

Comment:

The proposal as amended does not require the removal of any significant vegetation. The proposal will not dominant the natural scenic qualities of the foreshore and will be integrated into the natural environment.

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

Comment:

The resultant development is a single dwelling, consistent with the low density character of the locality.

Overall, the proposal is consistent with the desired objectives and future character of the C4 Environmental Living zone.

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	13.2m (First Floor) 0.1 (Gatehouse)	- 98.5%	Yes <b>No</b>
Rear building line	6.5m	1.1m - 2.4m (First Floor Planter)	63.1 - 83.1%	<b>No</b>
Side building line	2.5m (north-east)	2.4m (First Floor) 1.3m (Ramp)	4% 48%	<b>No</b> <b>No</b>
	1m (south-west)	0.9m (First Floor)	10%	<b>No</b>

Building envelope	3.5m (north-east)	Outside envelope	N/A	No
	3.5m (south-west)	Outside envelope	N/A	No
Landscaped area	60%	51.1% (367.8m <sup>2</sup> incl. 6% impervious treatment)	14.8%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	No	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

### C1.3 View Sharing

#### Merit Consideration

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

- *A reasonable sharing of views amongst dwellings.*

#### Comment:

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

#### **1. Nature of the views affected**

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

#### Comment to Principle 1:

**No. 7 Beauty Drive:** This property adjoins the site to the west. There is currently a two-storey dwelling house that enjoys views. The affected views are generally to the east and south. The views encompass landmarks such as Careel Headland Reserve, North Bilgola Headland, the land and water interface, as well as the ocean.

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

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

#### Comment to Principle 2:

**No. 7 Beauty Drive:** This property enjoys views across the rear boundary to the south and the side boundary to the east. The views are largely obtained from both standing and seated positions within internal and external areas of the dwelling on the ground floor, including the living areas and external balcony. In addition, views are also obtained from the dwelling's upper floor deck, as indicated in the following figures:



**Figure 1.** *Unaffected View - Dwelling facing south on the ground level, across the rear boundary from a standing position*



**Figure 2.** Affected View - Dining room facing east on the ground level, across the side boundary from a standing position



**Figure 3.** *Affected View - Balcony facing east on the ground level, across the side boundary from a standing position*





**Figure 4.** *Affected View - Living room facing southeast on the ground level, across the side boundary from a standing position*



**Figure 5.** *Affected View - Balcony facing south-east on the upper level, across the side boundary from a standing position*

### 3. Extent of impact

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

#### Comment to Principle 3:

As indicated in the figures above (Figures 1 - 5), this property has expansive ocean and district views that are obtained over the southern rear boundary, and eastern side boundary from various vantage points throughout the site.

The dwelling is a three-storey house and generally orientated to the south. The kitchen, living and dining rooms are located in central portion of the ground level. Views from these areas are demonstrated in Figures 1, 2 and 4.

As detailed in Step 1, and visually represented in Step 2, the views over the southern rear boundary include expansive district views and partial views of North Bilgola Headland, the land



and water interface, as well as the ocean. These views will not be impacted by the proposed development.

From the dining room (see Figure 2), the view loss from this area includes a reduction of water views, including a portion of the horizon. The view loss is considered minor from this area.

From the balcony (see Figure 3), the view loss from this area includes a reduction of water views. Furthermore, the loss of view differs from specific vantage points of the balcony, with noticeable impacts on the northern side when looking east. Conversely, there is reasonable preservation of the view when observed from the southern end. The degree of view loss from this area is considered moderate.

From the living room (see Figure 4), the view loss from this area includes either all or most of the water views. The view loss is considered moderate from this area, as most of available view is screen by existing vegetation and residential development.

From the upper level bedroom balcony (see Figure 5), the view loss from this area includes either all or most of the land and water interface. In this regard, the degree of view loss from this area is considered severe.

This assessment has taken into account the views gathered for the entire site. It reveals that the loss of views from this property ranges from minor to severe. However, as discussed further below, an acceptable level of view sharing is obtained, as the most affected views are directly across the side boundaries from low-valued areas in the context of this principle.

#### **4. Reasonableness of the proposal that is causing the impact**

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

##### Comment to Principle 4:

Clause C1.3 View Sharing and the intent of Tenacity goes towards the idea of view sharing - rather than view retention. The proposed development is not assessed as having any 'devastating' impacts as it will not block the entirety of No. 7 Beauty Drive's views. Notwithstanding, it is noted that the proposal will result in the loss of views that are clearly important and valuable to the residents of No. 7.

Notwithstanding, the proposed first floor complies with the critical control relating to view loss, being building height. While it is acknowledged that parts of the building breach the rear setback control, the total severity of impacts upon water views is not considered to be unreasonable. A more skillful design is not likely to be able to achieve a reasonable scaled development while reducing view impacts to the neighbouring property.

Given the above considerations, the proposed development is considered to be an acceptable outcome that would be reasonably expected for the site. On balance, the proposed

development will result in a reasonable sharing of views.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

Comment:

The proposal will not result in adverse view impacts from nearby public spaces.

- *Canopy trees take priority over views.*

Comment:

The proposal does not require the removal of any significant vegetation.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP 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.

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

The control mandates that private open spaces, including swimming pools and living rooms of adjacent dwellings, must be protected from direct overlooking within 9.0m. This can be achieved through building layout, landscaping, screening devices, or increased spatial separation. Additionally, elevated decks and balconies should incorporate privacy screens where needed, ideally positioned at the front or rear of the building.

The submissions received indicates that the proposal will give rise to unacceptable privacy impacts, specifically, overlooking from dwelling's first floor terrace. It's crucial to note that according to Pittwater 21DCP, private open space should predominantly reside in the rear and should be easily accessible from living areas, serving as an extension of internal living spaces. For the purposes of this assessment it is considered that No. 132 Whale Beach Road's rear deck serves as private open space, in accordance with the P21DCP requirement. This is demonstrated in the below figures:



**Figure 6.** From No. 132 Whale Beach Road rear garden steps facing north, private open space identified downslope of the subject dwelling



*Figure 7. From No. 132 Whale Beach Road rear garden steps facing east toward private open space*





**Figure 8.** From No. 132 Whale Beach Road rear garden facing north toward the subject dwelling



**Figure 9.** View from subject site's rear deck facing south toward No. 10 Crane Lodge Place

It should be noted that during the assessment of the application, amended plans were received which increased the proposed rear setback (and reduced the overall depth) of the terrace by 1.1m and included a raised planter within this setback area.

**Merit Consideration**

The development is considered against the underlying objectives of the control as follows:

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*

**Comment:**

The proposal includes a large elevated terrace on the southern side, providing direct access from both the kitchen and living areas. This area is expected to experience significant foot traffic, being directly linked to high-use rooms. Consequently, any potential for overlooking from this area is deemed less acceptable.

The terrace is positioned between 2.1m to 3.4m away from the southern rear boundary, and substantially more than 9.0m from the neighbouring private open spaces at No. 132 Whale Beach Road and No. 10 Crane Lodge Place. Figures 6 and 9 illustrate the topography, showing a sharp decline towards the respective private open spaces of the southern neighbours.

Consequently, the direct line of sight from the proposed terrace overlooks these dwellings without unreasonably encroaching upon their associated private open spaces.

Nevertheless, the initial proposal raised concerns regarding potential overlooking of the secondary open space, specifically the 'rear garden' of No. 132 Whale Beach Road, as depicted in Figure 8. To address this, the proposal was revised to reduce the terrace depth by 1.1m and incorporate a raised planter within this setback area. Additionally, it is recommended that the southern balustrade be of fixed panels or louver style construction (with a maximum spacing of 20mm) to mitigate any downward overlooking into the adjoining 'rear garden'.

All other windows and openings are considered acceptable and do not require additional privacy treatments, as they are not expected to cause unreasonable privacy impacts on adjacent properties.

In conclusion, with the proposed conditions, the design adequately mitigates significant visual privacy concerns, owing to the ample building separation, elevation variation, landscaping, and appropriate privacy measures.

- *A sense of territory and safety is provided for residents.*

Comment:

It is assumed the sense of territory and safety will be provided for residents.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP 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.

**D12.3 Building colours and materials**

**Description of Non-compliance**

The proposed development includes white and light colours in the proposed schedule of external finishes, which is not allowed under this control.

With respect to this non-compliance, the proposed development is considered against the underlying outcomes of the control, as follows:

**Merit Assessment**

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

- *Achieve the desired future character of the Locality.*

Comment:

The proposed colour palette, although not exclusively 'dark and earthy,' harmonises with the surrounding natural landscape. It aligns well with the aesthetic of numerous developments along Beauty Drive, embodying a coastal and 'beachside' feel, especially when seen from the

street. Thus, it adheres to the specified criteria regarding colors and finishes outlined in Clause A4.12 of the P21 DCP for the Palm Beach Locality, which outlines the envisioned character for the area.

- *The development enhances the visual quality and identity of the streetscape.*

Comment:

Several instances of white and light residential developments can be found along Beauty Drive. Furthermore, the colours and materials used in developments in this area are primarily light and white when seen from the street. Hence, the suggested light colours for the facade materials align with the visual character and identity of the streetscape. Moreover, it's worth mentioning that the proposed light colours will be tempered by landscaping when viewed from the street.

- *To provide attractive building facades which establish identity and contribute to the streetscape.*

Comment:

The proposed colour scheme, although not 'dark and earthy,' harmonises with the natural environment by aligning with various developments along Beauty Drive. It embodies a coastal and 'beachside' character, especially when observed from the streetscape. The development is softened by vegetation and landscaping, maintaining harmony with the natural surroundings.

- *To ensure building colours and materials compliments and enhances the visual character its location with the natural landscapes of Pittwater.*

Comment:

The subject site is on the low-side of Beauty Drive and the proposed development generally presents as a single storey development. The overall building bulk is addressed elsewhere in this report, however, the proposed colours and materials are considered to assist with mitigating the built form.

- *The colours and materials of the development harmonise with the natural environment.*

Comment:

As above, the proposed colours and materials are considered to reasonably harmonise with the natural environment.

- *The visual prominence of the development is minimised.*

Comment:

As above the proposal is softened by vegetation within the frontage.

- *Damage to existing native vegetation and habitat is minimised.*

Comment:

The proposed development does not damage significant native vegetation and habitat.

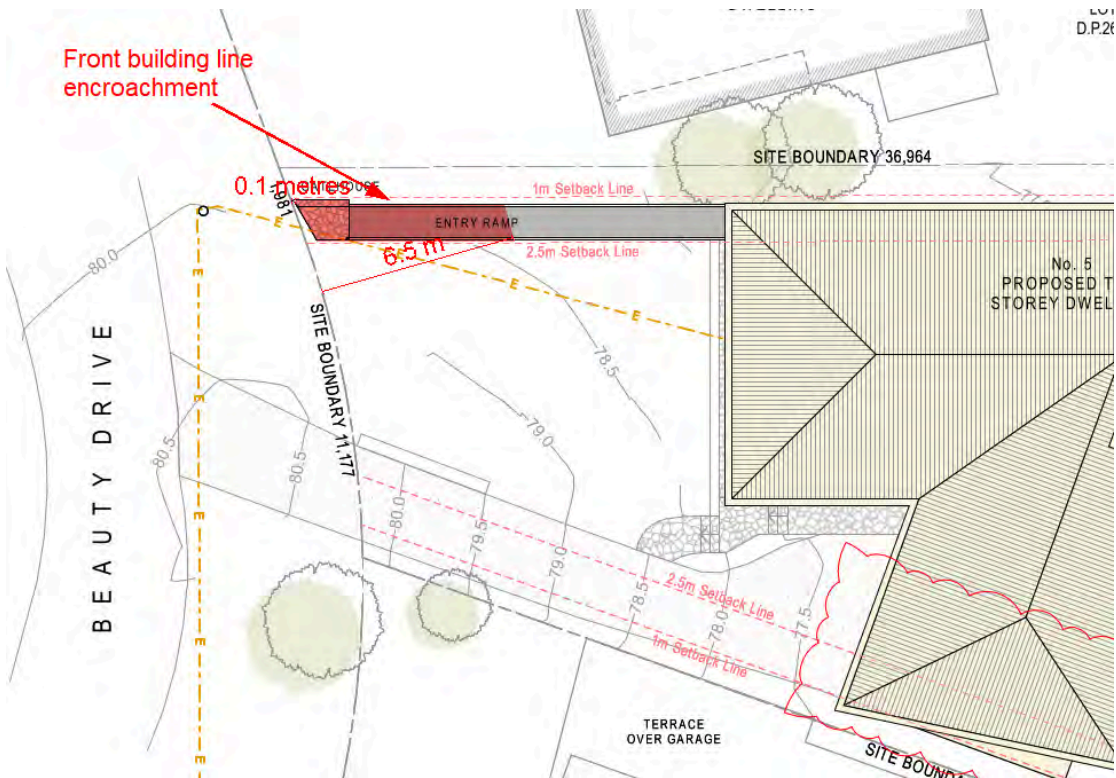


Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

**D12.5 Front building line**

**Description of Non-Compliance**

Built structures, other than driveways, fences and retaining walls are not permitted within the front building setback. The minimum front building line is 6.5m for the site. The proposal involves a varied front setback up to 0.1m (gatehouse/entry ramp) given the angled frontage, as displayed within the below diagram.



**Figure 10. Front building line encroachment.**

Merit Consideration

With regard to the consideration of the variation, the development is considered under the objectives of the control below:

- *Achieve the desired future character of the Locality.*

Comment:

The proposed development is consistent with the desired future character of the Palm Beach

Locality.

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

Comment:

The proposed structures within the front setback are low-lying and will not result in the loss of views.

- *The amenity of residential development adjoining a main road is maintained.*

Comment:

The site does not adjoin a main road.

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

Comment:

No significant canopy trees are proposed for removal and existing streetscape planting will remain reasonably undisturbed by these structures.

- *Vehicle manoeuvring in a forward direction is facilitated.*

Comment:

The proposal does not seek consent to alter the existing vehicular access on the site.

- *To preserve and enhance the rural and bushland character of the locality.*

Comment:

The proposal adequately maintains the existing bushland character of the locality.

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

Comment:

The established building line along Beauty Drive is relatively varied due to the subdivision pattern, access, and topography of the area. As such, built form is commonly seen within the front setback. Notwithstanding, the design is lightweight and sits well below the height of surrounding canopy trees.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment:

The proposed development will result in a significant improvement to the aesthetic quality of the Beauty Drive streetscape, as the works involve a highly considered built form that adequately responds to the constraints of the site and surrounding scenic qualities.

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

Comment:

The proposed development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment by being located in a portion of the site that is already disturbed, contains minimal native vegetation and has been designed with the topographic features of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP 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.

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

**Description of Non-compliance**

Clause D12.6 of the Pittwater 21 DCP requires development be setback at least 6.5m from the rear boundary, 1.0m from the south-west side boundary and 2.5m from north-east side boundary.

The development proposes the following non-compliance:

- North-east side setback - 1.3m (Ramp) & 2.4m (First Floor)
- South-west side setback - 0.9m (First floor)
- Rear setback - 1.1m to 2.4m (First Floor Planter)

The site is highly irregular in shape and has a number of site constraints to design around including the position of the existing dwelling. The variation to the setbacks are diagrammatically displayed below.

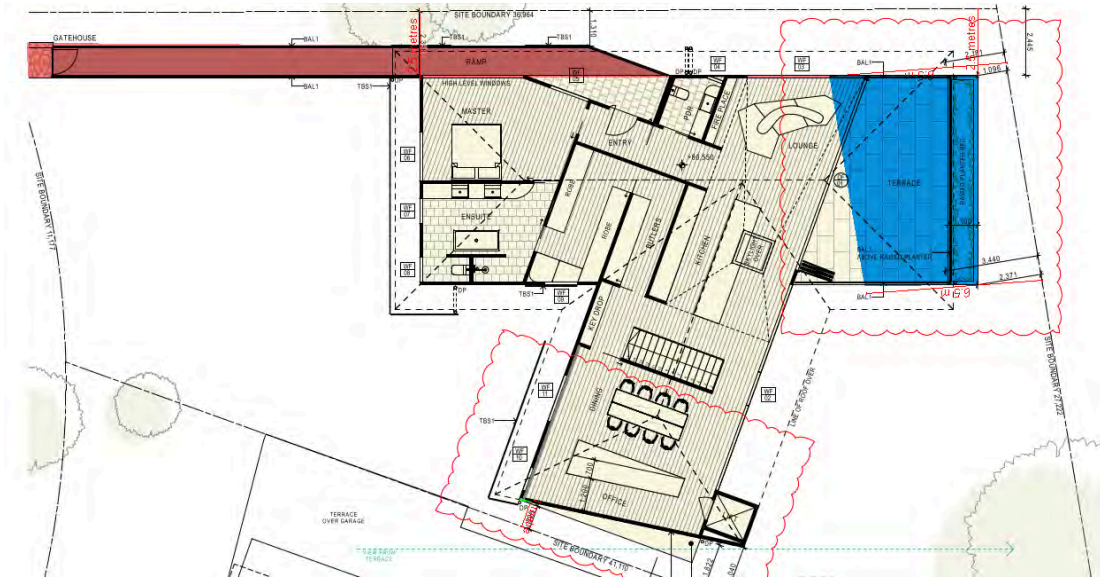


Figure 11. Side and rear setback non-compliance

**Merit Consideration**

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

- *To achieve the desired future character of the locality.*

Comment:

As discussed throughout this report, the desired future character of the area is considered to be achieved.

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

Comment:

The dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves, and changes in materials and roof formation to break up built form. Additionally, the proposal retains suitable landscaping minimise the visual impact of the development from adjoining properties and the public realm. This provides a situation in which presentation of bulk and scale is adequately minimised.

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

Comment:

This matter has been addressed elsewhere within the report (refer to Clause C1.3 View Sharing under P21DCP). In summary, the proposal is considered to equitably preserve the available views and vistas to and/or from public and private places.

- *To encourage view sharing through the complimentary siting of buildings, responsive design and well-positioned landscaping.*

Comment:

As noted above, the proposal achieves reasonable view sharing.

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

Comment:

It is considered that the proposal provides adequate spatial separation between adjoining buildings. The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintain solar access in accordance with the DCP requirements. The matter of privacy has been addressed elsewhere within this report in detail (refer Clause C1.5) and it is considered no unreasonable privacy impacts would occur as a result of the development. Furthermore, the proposal will retain suitable landscaping to minimise the visual impact of the development to the adjoining neighbour to assist in the preservation of residential amenity.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment:

The proposed development does not involve the removal of any significant vegetation and will allow for substantive landscaping across the site. Council's Biodiversity Officer has reviewed the proposal and is supportive of the proposal, subject to recommended conditions.

- *Flexibility in the siting of buildings and access.*

Comment:

The development has been sited appropriately in accordance with the site constraints and the surrounding residential context, ensuring reasonable amenity can be maintained for the dwelling occupants and those of adjoining and surrounding properties.

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

Comment:

The proposal does not involve any significant landscaping works and the subject site will remain substantially vegetated.

- *To ensure a landscape buffer between commercial and residential zones is established.*

Comment:

Not applicable, given the site does not adjoin a commercially zoned property.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the

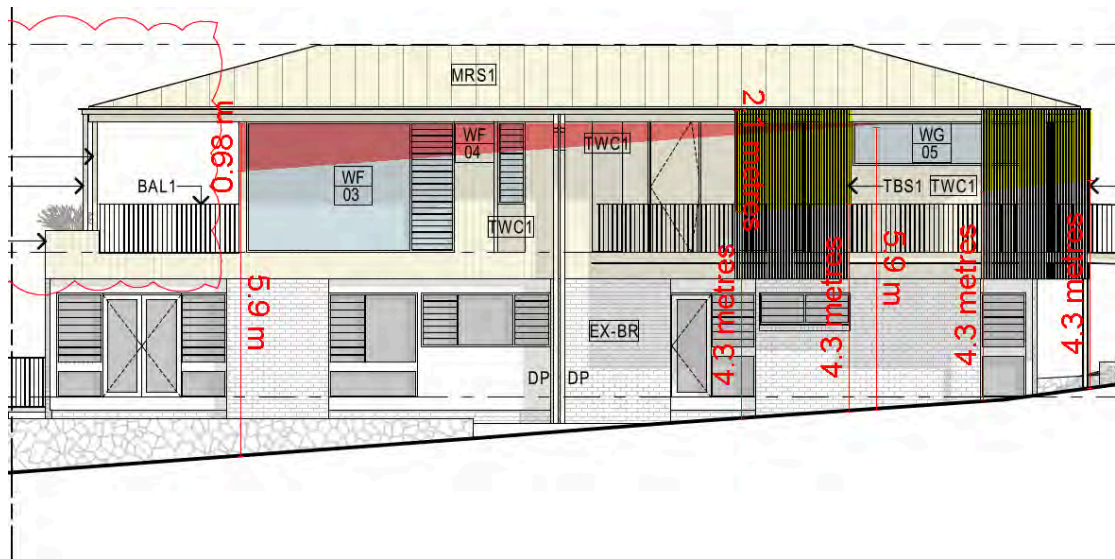
Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

**D12.8 Building envelope**

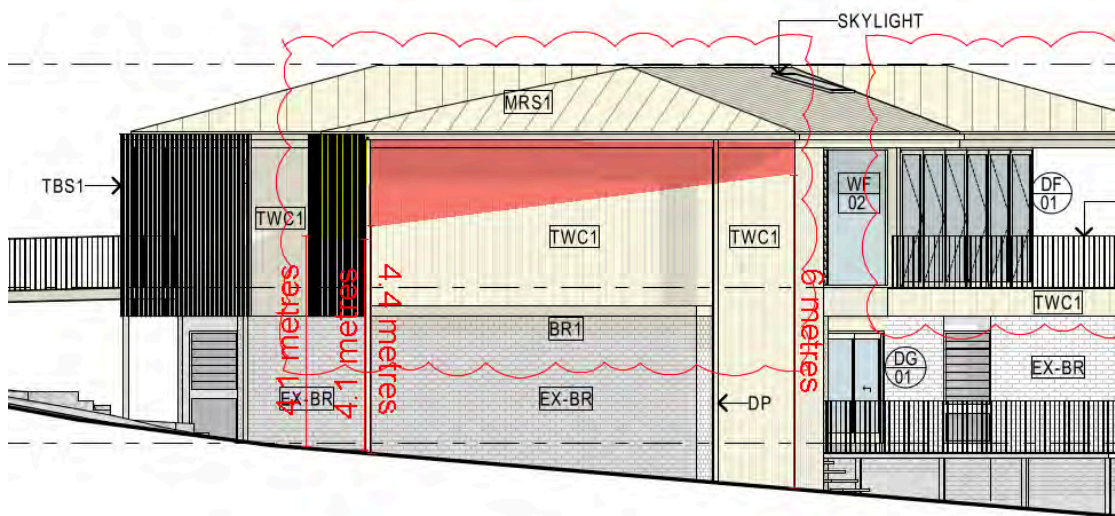
**Description of Non-compliance**

The DCP requires that the building be within a building envelope measured at 45 degrees from 3.5m above the side boundary line.

The proposal encroaches the building envelope on both side boundaries. The extent of the building envelope non-compliance is shown in the figures below:



**Figure 12.** North-east side boundary envelope encroachments as indicated in red and yellow



*Figure 13. South-west side boundary envelope encroachments as indicated in red and yellow*

**Merit Consideration**

With regard to the consideration of the variation, the development is considered under the objectives of the control below:

- *Achieve the desired future character of the Locality.*

Comment:

Notwithstanding the encroachments to the building envelope, the proposal is deemed to achieve the desired future character of the Palm Beach Locality.

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

Comment:

The proposed development is comparable with that of the built form of surrounding dwellings in the vicinity. The proposal is considered appropriate in the context of the site with the works being two storey. Existing landscaping will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. The proposed development is generally set below the height of the trees adjoining the works and in the locality. It is considered that the bulk and scale of the proposal would not be out of character with the existing site and wider locale.

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

Comment:

The proposal will remain two storey, low density residential build, built reasonably within the existing building footprint and will not result in the removal of significant vegetation or require significant alteration to the landform. The development is sited below tree canopy height and involves the retention of large trees on the site. Furthermore, additional landscaped areas ensure that the proposed sensitively relates to spatial characteristics of the existing natural environment.

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

Comment:

The proposed dwelling is appropriately modulated and articulated, with varied heights and setbacks and open balconies and incorporates various colors and materials to minimise the visual impact of the built form. Overall, it is considered that the bulk and scale of the dwelling would not be out of character with the existing site and wider locale.

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

Comment:

The encroachments sought into the side building envelope do not detract from the provision of



views currently enjoyed.

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

Comment:

The proposed development ensures adequate light, solar access and privacy is obtained between dwellings. The proposal complies with the requirements of the C1.4 - Solar Access and has been designed so that there are no unreasonable impacts on the adjoining neighbours. Adequate physical separation between the proposed development and habitable areas of the adjoining properties to protect privacy and amenity of the site and adjoining properties has been achieved.

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

Comment:

The proposal retains and enhances a satisfactory degree of vegetation as assessed elsewhere in this report.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP 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.

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

##### **Description of Non-compliance**

The control requires a landscaped area of 60% (431.76m<sup>2</sup>).

The proposal involves a landscaped area of 45.1% (324.6m<sup>2</sup>), representing a 24.8% variation to the control.

The variations provision of the control allows for impervious areas less than 1m wide and up to 6% of the site area to be counted as impervious landscape treatment, provided the outcomes of the control are achieved and such areas are used for outdoor recreational purposes only. Upon application of the variations the proposal provides a landscaped area of 51.1% (367.8m<sup>2</sup>).

Furthermore, it is important to note that the additions are largely located above the existing footprint, however, there is a minor reduction of 0.9% (6.8m<sup>2</sup>) as a result of new lift and back stair.

##### **Merit Consideration**

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

- *Achieve the desired future character of the Locality.*



Comment:

The proposed development is consistent with the desired future character of the Palm Beach locality.

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

Comment:

As discussed throughout this report the proposal has been appropriately designed to maintain a built form compatible within the locality.

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

Comment:

The proposed development ensures adequate light, solar access and privacy is obtained between dwellings. The proposal complies with the requirements of the C1.4 - Solar Access and has been designed so that there are no unreasonable impacts on the adjoining neighbours. Adequate physical separation between the proposed development and habitable areas of the adjoining properties to protect privacy and amenity of the site and adjoining properties has been achieved.

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

Comment:

No significant vegetation is required to be removed to facilitate the proposed development. Existing surrounding vegetation will not be significantly impacted by this development. The built form will continue to be sufficiently screened and visually reduced as a result.

- *Conservation of natural vegetation and biodiversity.*

Comment:

No significant vegetation is required to be removed to facilitate the proposed works. The conservation of natural vegetation and biodiversity will therefore be achieved.

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

Comment:

The proposal has been reviewed by Council's Development Engineer, having regard to provisions for stormwater management and has raised no objections to the proposed stormwater system, subject to conditions included in the recommendation of this report.

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

Comment:

The bushland character of the area will be maintained as no significant vegetation is required to be removed as a result of the proposed development.

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

Comment:

Sufficient permeable surfacing is provided on-site which will enable the infiltration of water to the water table, whilst minimising run-off and assisting with stormwater management.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP 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 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$9,753 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$975,315.

### **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 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

## PLANNING CONCLUSION

In conclusion, this application for alterations and additions to a dwelling house, including a first-floor addition, has been thoroughly assessed and reviewed by the Development Determination Panel (DDP). Despite initial concerns raised in the five submissions received during the notification period, comprehensive revisions and amendments have been made to address issues related to views, privacy, built-form compliance, traffic, and environmental impacts.

Critical assessment revealed challenges regarding view loss, privacy, and non-compliance with numeric requirements outlined in the Pittwater 21 Development Control Plan. However, these challenges are consequence of the irregular lot shape and the position of the existing dwelling, necessitating variations to enable reasonable redevelopment.

Despite these challenges, the proposal has been adequately designed to maintain compatibility with the existing built form and minimise adverse amenity impacts. It has also been deemed to have an acceptable impact on the views and privacy of adjoining properties.

The amended proposal features a highly articulated façade and incorporates architectural measures such as skewed windows, privacy walls/screens, and deep planter boxes to resolve privacy concerns while still allowing for coastal views from the subject dwelling.

In light of the thorough assessment and the proposed mitigating measures, it is recommended that the DDP grant **APPROVAL** to the application, subject to the conditions outlined in the attached report.

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 DA2023/1843 for Alterations and additions to a dwelling house on land at Lot 7 DP 26718, 5 Beauty Drive, WHALE BEACH, subject to the conditions printed below:

### Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

## GENERAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

<b>Approved Plans</b>				
<b>Plan Number</b>	<b>Revision Number</b>	<b>Plan Title</b>	<b>Drawn By</b>	<b>Date of Plan</b>
1002	B	Site Plan	Bones Studio	22 April 2024
1201	A	Demolition Floor Plan - Ground Floor	Bones Studio	30 November 2023
1202	A	Demolition Roof Plan	Bones Studio	30 November 2023
2101	B	Proposed Floor Plan - Ground Floor	Bones Studio	22 April 2024
2102	B	Proposed Floor Plan - First Floor	Bones Studio	22 April 2024
2103	B	Proposed Roof Plan	Bones Studio	22 April 2024
3001	A	Proposed Finishes Schedule	Bones Studio	30 November 2023
3002	B	Proposed Elevation - Sheet 1	Bones Studio	22 April 2024
3003	B	Proposed Elevation - Sheet 2	Bones Studio	22 April 2024
3004	B	Proposed Elevation - Sheet 3	Bones Studio	22 April 2024
3101	B	Sections	Bones Studio	22 April 2024
3102	A	Sections	Bones Studio	30 November 2023

<b>Approved Reports and Documentation</b>			
<b>Document Title</b>	<b>Version Number</b>	<b>Prepared By</b>	<b>Date of Document</b>
BASIX Certificate	A509300_03	Christopher Brandon	19 April 2024
Geotechnical Assessment	AG 23733	AscentGeo	9 November 2023
Waste Management Plan	-	Listed Applicant	-

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

**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	24 January 2024

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://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. No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

**4. Prescribed Conditions**

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

## 5. General Requirements

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

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) 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 an 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 following is required:
  - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.
  - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
  - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or 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 sewerred areas or managed on-site in unsewerred 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

### 6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,753.15 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 (as amended).



The monetary contribution is based on a development cost of \$975,315.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

#### 7. **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 Certifier prior to the issue of the Construction Certificate.

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

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

### **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

#### 8. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

#### 9. **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 TfNSW 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.

10. **Stormwater Disposal from Low Level Property**

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular Section 5.5 Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with Northern Beaches Council's policy by an appropriately qualified Civil Engineer are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by AscentGeo Geotechnical Consulting dated 09.11.2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Amendments to the approved plans**

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

- The southern balustrade (rear) of the first floor terrace shall be of fixed panels or louver 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 Certifier prior to the issue of the Construction Certificate.

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

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

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and

3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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 ensure no substance other than rainwater enters the stormwater system and waterways.

14. **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 Certifier prior to the issue of the Construction Certificate.

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

15. **External Finishes to Roof**

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

Details demonstrating compliance are to be submitted to the Certifier 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.

16. **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 Certifier demonstrating the works are in compliance with Sydney Water requirements.

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

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

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

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

**DURING BUILDING WORK**

17. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a

native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

18. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

19. **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.

20. **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.

21. **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 Certifier, 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.

22. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

23. **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.

**BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

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

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

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

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

25. **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 Certifier prior to the issue of an Occupation Certificate.

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

26. **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.

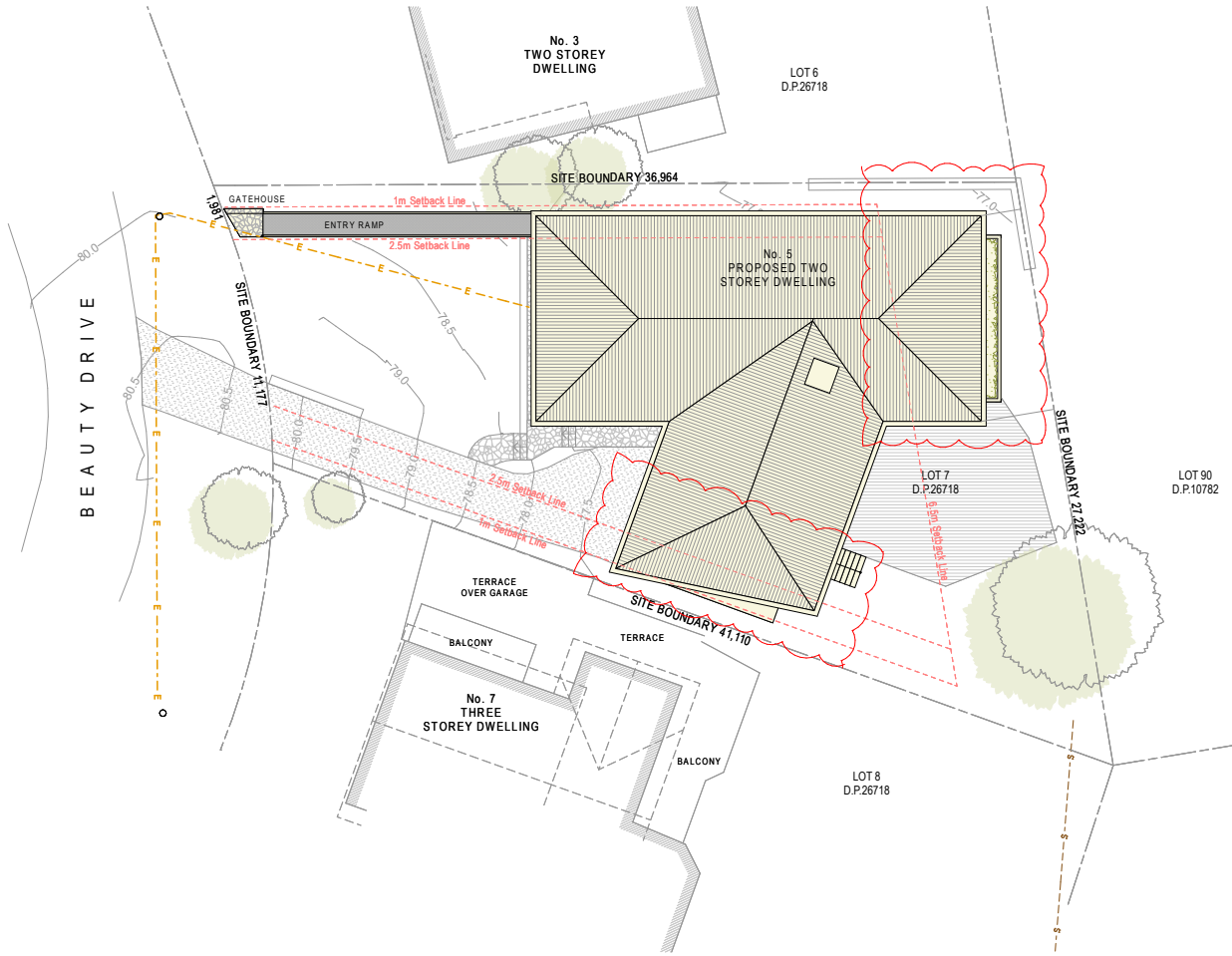
Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

B



01 PROPOSED SITE PLAN  
Scale 1:200

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Nominated Architect: Christopher Branson  
NSW A&B Registration number: 3710

B	22/04/24	Council RFI
A	30/11/23	Issued for DA
P3	22/11/23	Prelim DA for Review
P2		Prelim DA for Review
P1	31/10/23	Prelim DA for Review
Rev	Date	Issue



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Project **House at Whale Beach**  
5 Beauty Drive, Whale Beach  
Client Julia and Jarrad Robertson

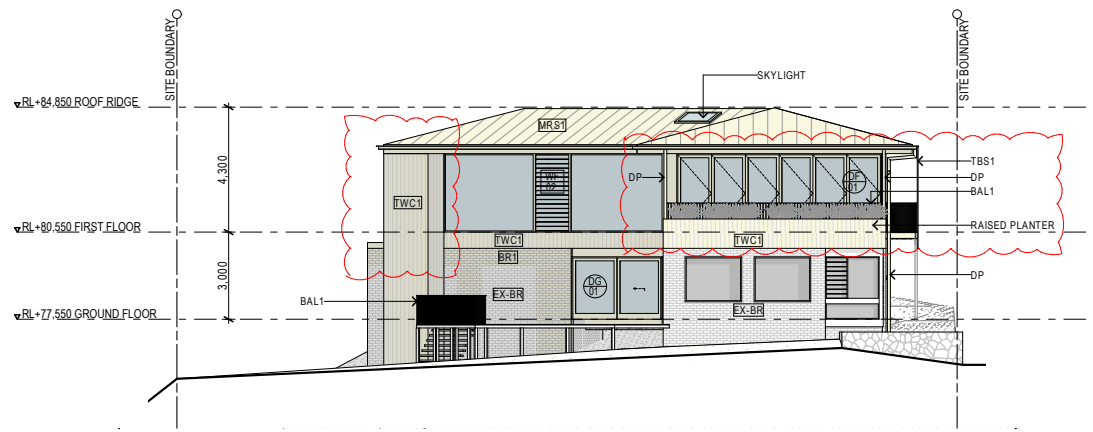
Drawing Name  
**PROPOSED SITE PLAN**

Job No. **2218**  
Scale 1:200@A3  
Stage Drawing No. **SD 1002**  
Drawn Revision  
CB B

B



01 NORTH-EAST ELEVATION  
Scale 1:150



02 SOUTH-EAST ELEVATION  
Scale 1:150

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Nominated Architect: Christopher Brandon  
NSW A&B Registration number: 3700

B	22/04/24	Council RFI
A	30/11/23	Issued for DA
P3	22/11/23	Prelim DA for Review
P2		Prelim DA for Review
P1	31/10/23	Prelim DA for Review
Rev	Date	Issue

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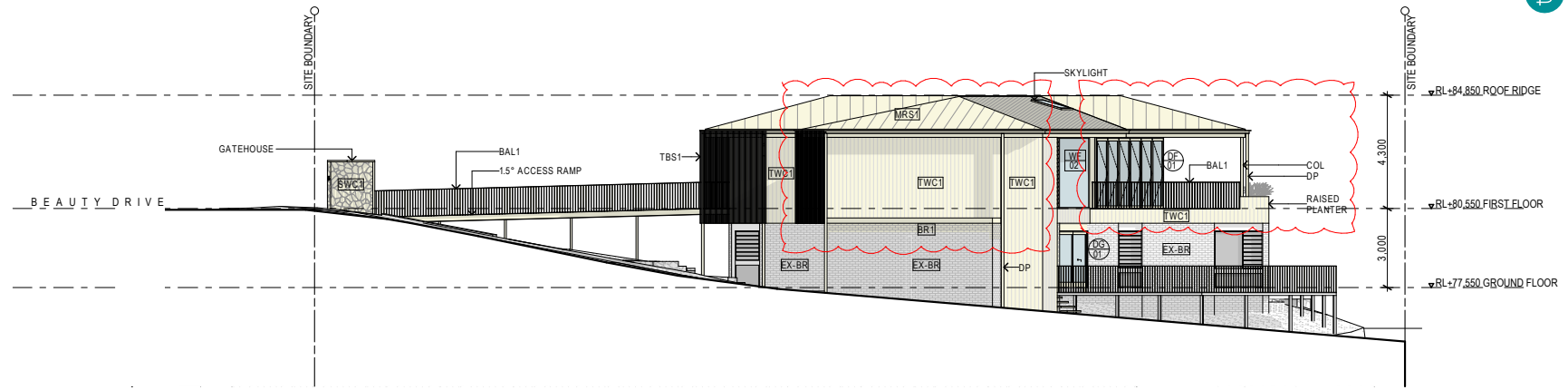
Project **House at Whale Beach**  
5 Beauty Drive, Whale Beach  
Client Julia and Jarrad Robertson

Drawing Name  
**PROPOSED ELEVATIONS - SHEET 1**

Job No. **2218**  
Scale 1:150@A3  
Stage Drawing No. **SD 3002**  
Drawn Revision  
CB B



B



01 SOUTH-WEST ELEVATION  
Scale 1:150

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Nominated Architect: Christopher Brandon  
NSW A&B Registration number: 3710

B	22/04/24	Council RFI
A	30/11/23	Issued for DA
P3	22/11/23	Prelim DA for Review
P2		Prelim DA for Review
P1	31/10/23	Prelim DA for Review
Rev	Date	Issue

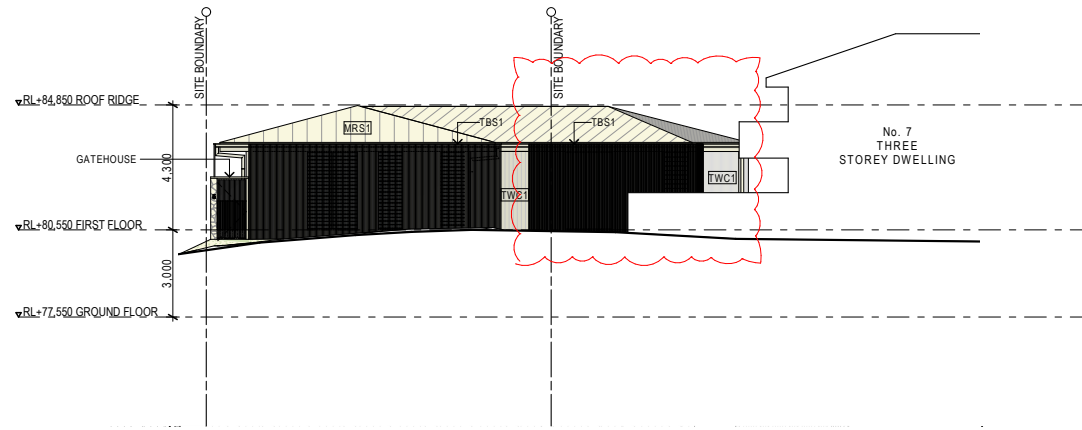
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Project **House at Whale Beach**  
5 Beauty Drive, Whale Beach  
Client Julia and Jarrad Robertson

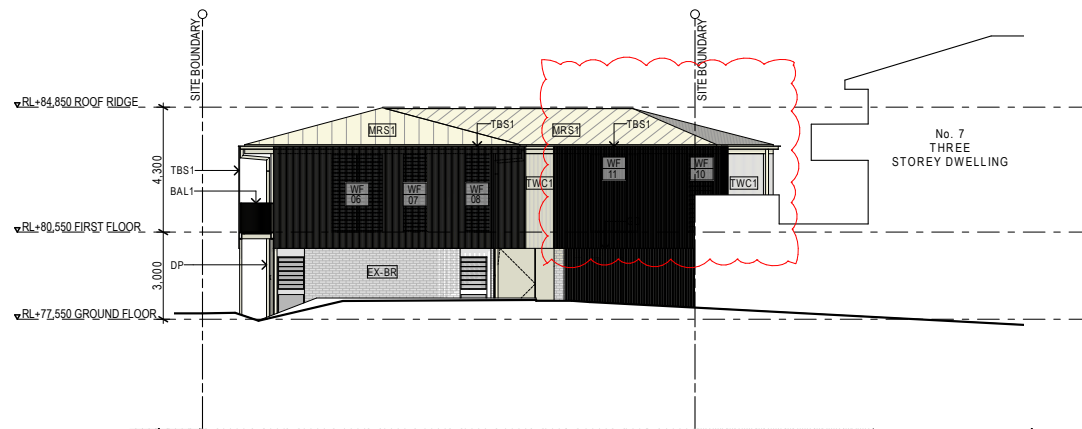
Drawing Name  
**PROPOSED ELEVATIONS - SHEET 2**

Job No. **2218**  
Scale 1:150@A3  
Stage Drawing No. **SD 3003**  
Drawn Revision  
CB B

B



01 NORTH-WEST ELEVATION (FROM BEAUTY DRIVE)  
Scale 1:150



02 NORTH-WEST ELEVATION  
Scale 1:150

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Nominated Architect: Christopher Brandon  
NPIA 4481 Registration number: 3710

B	22/04/24	Council RFI
A	30/11/23	Issued for DA
P3	22/11/23	Prelim DA for Review
P2		Prelim DA for Review
P1	31/10/23	Prelim DA for Review
Rev	Date	Issue

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Project **House at Whale Beach**  
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Client Julia and Jarrad Robertson

Drawing Name  
**PROPOSED ELEVATIONS - SHEET 3**

Job No.  
**2218**  
Scale  
1:150@A3

Stage Drawing No.  
**SD 3004**  
Drawn Revision  
CB B

**ITEM 3.4      DA2023/0803 - 287 MONA VALE ROAD TERREY HILLS -  
ALTERATIONS AND ADDITIONS TO THE EXISTING HILLS FLOWER  
MARKET SITE**

**PURPOSE**

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

**RECOMMENDATION**

THAT Council as the consent authority **approves** Development Consent to DA2023/0803 for alterations and additions to the existing Hills Flower Market site on land at Lot 1 DP 845094, 287 Mona Vale Road TERREY HILLS, subject to the conditions set out in the Assessment Report.

<b>Reporting manager</b>	Steve Findlay
<b>TRIM file ref</b>	2024/341728
<b>Attachments</b>	<a href="#">↓1 Assessment Report</a> <a href="#">↓2 Site Plan and Elevations</a>

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/0803
----------------------------	-------------

<b>Responsible Officer:</b>	Kye Miles
<b>Land to be developed (Address):</b>	Part Lot 1 DP 845094, 287 Mona Vale Road TERREY HILLS NSW 2084
<b>Proposed Development:</b>	Alterations and additions to the existing Hills Flower Market site
<b>Zoning:</b>	Warringah LEP2011 - Land Zoned RU4 Primary Production Small Lots WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Hills Marketplace Pty Limited
<b>Applicant:</b>	Hills Marketplace Pty Limited

<b>Application Lodged:</b>	28/06/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	04/07/2023 to 18/07/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	7
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 9,729,500.00
---------------------------------	-----------------

### EXECUTIVE SUMMARY

This development application seeks consent for substantial alterations and additions to the existing Hills Flower Market (Garden Centre), including signage.

The application is referred to the Development Determination Panel (DDP) due to the receipt of more than five submissions objecting to the proposal. Of the seven submissions received, six were objections while one was in support. Concerns raised primarily pertain to traffic and amenity impacts,

particularly loss of acoustic privacy, as well as issues regarding permissibility, landscaped area, stormwater, and excavation.

The proposal does not result in any variations to principal development standards under Warringah Local Environmental Plan (WLEP) 2011. Critical assessment issues included those raised within the submissions and non-compliance with the Side Boundary Setbacks, Rear Boundary Setbacks, Main Roads Setback and Landscaped Open Space and Bushland Setting controls.

Variations to the abovementioned Development Control Plan (DCP) controls are considered acceptable within the context of the site, with vast improvements proposed across the site, including enhanced streetscape landscaping, rationalisation of buildings and signage, upgrades to environmental management, and compliant parking to accommodate additional floorspace/uses.

These issues have largely been resolved during the assessment process through the submission of amended plans. Concerns raised by Council regarding surplus parking spaces and inadequate landscaped area have been addressed by the removal of parking spaces and incorporation of additional deep soil landscaping across the site.

The proposal involves the expansion and reconfiguration of tenancies within the existing Hills Flower Market, resulting in a reduction of Gross Floor Area (GFA) from 2,606.4m<sup>2</sup> to 2,552.5m<sup>2</sup>. However, the proposal includes a new detached restaurant of 467.6m<sup>2</sup>, representing a 12.5% increase in food and drink premises uses on the site. Despite this increase, the proposed use of the site is deemed consistent with zone objectives and the wider locale, as discussed in detail within the report.

Additionally, the proposal seeks alterations to a shop, which is a prohibited use in the RU4 Primary Production Small Lots zone under WLEP 2011. However, this portion of the site benefits from Existing Use Rights for the purposes of a shop, as per Division 4.11 of the Environmental Planning and Assessment Act, 1979. Furthermore, the site benefits from the provisions of Schedule 1 Additional Permitted Uses (18) of WLEP 2011, allowing development for the purpose of a 'Garden Centre'.

After a detailed assessment, the proposal is found to be consistent with the objectives of relevant standards and controls, with no issues warranting refusal of the proposed development.

Therefore, this report concludes with a recommendation that the DDP grant **APPROVAL** to the development application, subject to conditions.

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

Development Consent is sought for alterations and additions to the existing Hills Flower Market, including associated signage.

Specifically, the application seeks consent for the following elements:

- Demolition of various structures, including, the existing dwelling house and at grade parking
- Construction of a new restaurant with ancillary brewing equipment (see below for further details)
- Construction of new garden centre and rural supplies outlet
- Alterations and additions to existing building
- Ancillary plant cultivation area
- Installation of nine illuminated business identification signs
- Provision of 182 on site car parking spaces

- Construction on new paths and retaining walls
- Removal of 28 trees, (15 of which are exempt)
- Replanting of 15 trees and associated landscaping
- Bulk cut and fill earthworks
- Installation of a new stormwater drainage system

### **Operational details**

The proposed operational details of the Hills Flower Market are listed within the submitted Statement of Environmental Effects, however, a brief overview is provided for the proposed new buildings, including an expanded garden centre with ancillary plant cultivation area, rural supplies outlet and a new restaurant that will include a small area for ancillary brewing equipment.

The specific uses are detailed below:

- Flower Shop – 473.6m<sup>2</sup>
- Garden Centre (including shared amenities) – 1,042m<sup>2</sup>
- Café/Restaurant - 244m<sup>2</sup>
- Restaurant (including ancillary brewing equipment) – 467.6m<sup>2</sup>
- Rural Supplies – 350.7m<sup>2</sup>

No changes are proposed to the existing ancillary office space on the mezzanine level.

### **Hours of Operation**

The businesses in the Hills Marketplace, both existing and proposed, will have designated trading hours, as displayed below:

- Existing commercial and retail tenancies: 7.00 am to 8:30 pm daily
- Existing café/restaurant: 7.00 am to 10.00 pm daily
- Proposed restaurant: 7.00 am to 10.00 pm Sunday-Wednesday, and 7.00 am to 12.00 am Thursday-Saturday

### **Traffic Management**

The proposal will provide 182 off-street parking spaces (existing and proposed) throughout the site.

Existing vehicular access will remain unaltered.

### **AMENDED PLANS**

Following a preliminary assessment of the application, Council issued an RFI to the applicant on 1 November 2023, outlining concerns with the application.

The concerns related to front setback, landscaped open space and referral issues (Environmental Health, Development Engineering, and Water Management).

The applicant lodged amended plans and additional information to address the concerns on 28 November 2023.

Revised civil engineering plans were lodged with Council on 7 December 2023.

The amended plans incorporated the following changes:

- Removal of 14 carparking spaces and convert to deep soil landscaping.
- Installation of a safety fence around the OSD bio-basin.

Additional amended plans (including updated landscaping and civil engineering plans) were lodged on 1 May 2024, which involved increasing the OSD bio-basin's side setback to 2.5m (+0.8m).

### **Community Participation Plan**

The proposed amendments will have a reduced environmental impact on the adjoining properties when compared to the original proposal. Therefore, formal re-notification is not required in accordance with Northern Beaches Community Participation Plan.

### **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 - 2.5 Additional permitted uses for particular land  
Warringah Local Environmental Plan 2011 - Zone RU4 Primary Production Small Lots  
Warringah Local Environmental Plan 2011 - 6.2 Earthworks  
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land  
Warringah Development Control Plan - B5 Side Boundary Setbacks  
Warringah Development Control Plan - B9 Rear Boundary Setbacks  
Warringah Development Control Plan - B14 Main Roads Setback  
Warringah Development Control Plan - C3 Parking Facilities  
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting  
Warringah Development Control Plan - D3 Noise  
Warringah Development Control Plan - D8 Privacy  
Warringah Development Control Plan - D23 Signs

**SITE DESCRIPTION**

<b>Property Description:</b>	Part Lot 1 DP 845094 , 287 Mona Vale Road TERREY HILLS NSW 2084
<b>Detailed Site Description:</b>	<p>The subject site is legally described as Lot 1 in Deposited Plan 845094 and is known as 287 Mona Vale Road, Terrey Hills. Colloquially the site is known by the business present at the site, being Hills The Flower Market .</p> <p>The site falls within the RU4 Primary Production Small Lots zone pursuant to the Warringah Local Environmental Plan 2011, and benefits from the provisions of Schedule 1 Additional Permitted Uses (18) of the same instrument.</p> <p>The site is rectangular in shape has a street frontage of 142.3m along Mona Vale Road</p> <p>Overall the site has a surveyed area of 2.0 hectares, or 20,000m<sup>2</sup>.</p> <p>The site presently accommodates a garden centre with associated sub-uses (i.e., mower shop, pool supplies), growing areas, garden shop, restaurant, car parking, landscape supplies, detached dwelling house and ancillary components (i.e., small cafe, amenities). The site obtains vehicular access from Mona Vale Road and from Myoora Road into the patron car parks.</p> <p><b>SURROUNDING DEVELOPMENT</b></p> <p>The development is bound by different land uses on all four sides.</p> <ul style="list-style-type: none"> <li>• Immediately north-east of the site is a large parcel of land that appears to accommodate a small dwelling, sheds interspersed across the lot.</li> <li>• Immediately north-west of the site is a large parcel accommodating a place of public worship.</li> <li>• Immediately south-west of the site is a large parcel accommodating a function centre and motel, colloquially known as Miramare Gardens</li> <li>• South-east beyond the road is bound by bushland and the JJ Memorial Hill Reserve and Kimbriki Resource Recovery Centre.</li> </ul> <p>Myoora Road generally leads to large lot residential properties, educational establishments, landscape supply sites, and a private hospital that is under construction.</p>

Map:





## SITE HISTORY

The land has been used for commercial purposes since the 1920s. A search of Council's records has revealed the following relevant history:

On 2 December 1997, an application (97/311) for alterations and additions to the existing flower shop, including refreshment room, child care centre and three glass houses, with ancillary parking was approved by Warringah Shire Council.

On 14 December 1999, an application (1643DA) for alterations and additions to Hills Flower market shop to reposition entry and exit driveways, associated carparking and landscaped areas was approved by Warringah Shire Council.

On 31 January 2006, an application (DA2004/1012) for alterations and additions to existing flower market building with basement carparking, use of additions as a retail plant nursery, minor ancillary works, and demolition of one glasshouse was approved by the Land & Environment Court.

On 18 December 2006, an application (DA2005/1010) for change of use to include turf outlet, rainwater tank outlet & rural supplies outlet approved by the Land & Environment Court. In addition, modification (Mod2004/1012/1) of DA2005/1010, including, alterations to the configuration of on-site car parking provision was approved by the Land & Environment Court.

### Recent Pre-Lodgement Meeting

On 11 August 2022, the applicant met with Council to discuss a proposal for alterations and additions of the Hills Flower Market site, under pre-lodgement meeting reference PLM2022/0156. In that meeting, a design was presented that was generally similar in architecture to that of the subject scheme. In its written minutes, Council advised that the application could be supported subject to increasing the quantum of landscaping and providing additional information regarding existing use rights, stormwater impacts, and appropriate traffic management.

## 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	There are no current draft environmental planning instruments.
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 Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 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 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans, revised engineering and water management details.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>

Section 4.15 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**

- **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 this Division, 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 a building for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use?

Comment:

The Applicant has provided evidence in the form of historical building approvals (DA2004/1012), which reveals that the use of the shop commenced as a lawful purpose on 2 January 2009, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

2. Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the building as a shop was lawfully approved by Council on 31 January 2006, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. Has the use of the building 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 Applicant has provided evidence in the form of historical building approvals, which reveals that the use of the building was carried out since its most recent approval in 2006, which is within one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is “the land on which the existing use was carried out” for the purposes of cl 162-167 of the Environmental Planning and Assessment Regulation 2021 (“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 a part of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was not used for that purpose and that existing use rights do not 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 principles of *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71* however have been varied by more recent judgements of the Court to the extent described in *Saffioti v Kiama Municipal Council [2019] NSWLEC 57* and *Made property Group Pty Ltd v North Sydney Council [2020] NSWLEC 1332* in that the planning controls apply to the existing use provided they do not derogate, due to the planning controls within an EPI being 'incorporated provisions' and therefore matters for consideration as described within Clause 4.67 of the Environmental Planning and Assessment Act, 1979.

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:

The flower market/shop is located in a ground floor space of the main building. The works largely relate to minor internal refinements and a slight expansion (17.6m<sup>2</sup>). In this regard, the proposed changes to the existing flower market/shop will have an indiscernible impact on building bulk.

**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 Hills Flower Market commenced operations since the 1920's. It is considered the proposal would not be out of character with the area and is an established use within the locality. The minor internal expansion will not have a discernible impact on building bulk, off-street parking or neighbouring amenity.

**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 above, impacts to adjoining land will be inexistent given the internal nature of the works.

**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:

Not applicable to the proposed development.

**Conclusion**

The use has been approved under a previous environmental planning instrument (WLEP 2000) and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (WLEP 2011).

**BUSHFIRE PRONE LAND**

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Australian Bushfire Protection Planners, dated 20 October 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

**NOTIFICATION & SUBMISSIONS RECEIVED**

The subject application has been publicly exhibited from 04/07/2023 to 18/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

<b>Name:</b>	<b>Address:</b>
Debbie Gai Severino	58 Myoora Road TERREY HILLS NSW 2084
Mr Marc Collins	103 Booralie Road TERREY HILLS NSW 2084
Ms Lesley Dawn Nalbandian	47 / 0 Tooronga Road TERREY HILLS NSW 2084
Terrey Hills Progress Association	22 Myoora Road TERREY HILLS NSW 2084
Mr Alexander Armour	35 Myoora Road TERREY HILLS NSW 2084
Duffys Forest Residents Association	PO Box 567 TERREY HILLS NSW 2084
Tomasy Planning Pty Ltd	1 / 41 - 49 Darley Street East MONA VALE NSW 2103

Seven (7) submissions were received, one (1) is support and six (6) in objection to the application.

The following issues were raised in the submissions:

- **Traffic**
- **Noise**
- **Inconsistent with zone objectives**
- **Permissibility**
- **Landscaped area**
- **Stormwater**
- **Excavation**

The above issues are addressed as follows:

- **Traffic**

The submissions raised concerns that the development will have a detrimental impact on the congestion of surrounding streets and will give rise to greater traffic hazards and risks, particularly upon students and parents of the nearby school.

Comment:

This issue is addressed in detail under Council's Traffic Referral Comments. In summary, the applicant submitted a Traffic Impact Assessment with the application, which assessed the likely traffic impacts of the proposal on the adjacent road network due to additional traffic and parking demand generated by the development.

The assessment and information provided by the applicant is considered reasonable and adequate and Council's Traffic Section raises no concerns in relation to the proposed development on traffic grounds, recognising that the proposal will be acceptable in relation to traffic impacts. In addition, to ensure appropriate traffic management, a condition has been imposed. This condition mandates a thorough review and approval of the Construction Traffic Management Plan (CTMP) by Council's Traffic Section before a Construction Certificate can be issued.

This matter does not warrant the refusal of the application.

- **Noise**

The submissions raised concerns that that the proposal will result in unreasonable acoustic impacts from the new restaurant and additional traffic generation.

Comment:

The application is supported by an Acoustic Impact Assessment, prepared by Stantec, dated 1 June 2023. The assessment has predicted noise impacts at the most sensitive boundary positions. The measurements show that all the relevant criteria (as provided for in the WDCP 2011 and EPA NSW Industrial Noise Policy) for noise emissions will be met. In addition, the application has been referred to Council's Environmental Health (Industrial) Officer who supports the proposal, subject to recommended conditions of consent including additional certification of acoustic requirements.

Overall, the predicted noise levels as detailed in the Acoustic Report indicate noise compliance is achievable with the list criteria at the location of the nearest noise sensitive residential receivers.

This matter does not warrant the refusal of the application.

- **Inconsistent with zone objectives**

The submissions raised concerns that the proposed use of the site is inconsistent with the zone objectives and the immediate locality.

Comment:

The subject site is zoned RU4 Primary Production Small Lots and contains an existing garden centre commonly known as 'Hills Flower Market'. Although, the proposal seeks substantial alterations and additions to the existing premises, the predominant use is retained, only intensified. The proposed works will be generously set back from the boundaries, while proposed perimeter planting will readily screen the premises from adjoining and surrounding residential sites. On balance, the proposal will reasonably maintain neighbourhood amenity, while remaining consistent with the zone's objectives and the desired future character of the Terrey Hills locality.

This matter does not warrant the refusal of the application.

- **Permissibility**

The submissions raised concerns with the permissibility of the proposed land uses, particularly, with the ancillary brewery and office spaces

Comment:

Matters relating to permissibility have been discussed throughout this report. In summary, the proposal's predominant use is appropriately defined as a *Garden Centre* and is therefore permitted with consent in the RU4 zone pursuant to Schedule 1 of WLEP 2011. Additionally, the proposal involves the construction of a new restaurant that seeks to include an area with ancillary brewing equipment. It is considered that this area constitutes an ancillary function to the restaurant, given its minimal size and scale. Furthermore, the applicant has satisfactorily demonstrated that portions of the central building have Existing Use Rights for the purposes of a *Shop*, as per Division 4.11 of the Environmental Planning and Assessment Act, 1979.

This matter does not warrant the refusal of the application.

- **Landscaped area**

The submissions raised concerns that the proposal provides inadequate landscaped area.

Comment:

This matter is discussed in detail under Part D1 Landscaped Open Space. In summary, the proposal has been amended to minimise excessive car parking and to provide additional deep soil areas across the site, particularly within the frontage. Additionally, the proposal involves a slight increase in deep soil landscaping by 6.7% (1,320.3 m<sup>2</sup>). Overall, the landscape proposal incorporates a variety of treatments to the development area, including tree and mass planting in the front setback zone, aimed at softening the built form.

This matter does not warrant the refusal of the application.

- **Stormwater**

The submissions raised concerns that the proposal will impact upon existing drainage infrastructure and create unreasonable run-off.

Comment:



The application was reviewed by Council's Development Engineering section, with consideration given to stormwater aspects. The engineering team supports the proposal, subject to specific conditions attached to this report. Overall, the proposed development will not result in significant adverse impacts due to stormwater discharge from the development site.

This matter does not warrant the refusal of the application.

- **Excavation**

The submissions raised concerns with the excavation and construction impacts associated with the proposed drainage infrastructure, and the potential impact on the nearby structures at No. 48 Myoora Road (Miramare Gardens).

Comment:

The application is supported by a detailed geotechnical assessment which provides information on the site's subsurface condition and demonstrates that the proposed excavation is satisfactory, subject to compliance with the recommendations made in the report. In relation to any potential damage to adjoining properties as a result of excavation on the site, conditions of consent are recommended which require a pre and post dilapidation survey be undertaken of the neighbouring properties to document the condition of these sites. Where damage is identified as a part of this process, remedial works is a civil matter between the respective parties.

This matter does not warrant the refusal of the application.

**REFERRALS**

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported - subject to conditions</b></p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Contaminated Lands)	<p><b>Supported - subject to conditions</b></p> <p>Geo-Logix Pty Ltd (Detailed Site Investigation -Report reference: 2201064Rpt01FinalV02_8Nov22 Date: 8 November 2022 ) was commissioned by Hills Marketplace Pty Ltd (Hills Marketplace) to conduct a Detailed Site Investigation (DSI) of the property located at 287 Mona Vale Road, Terrey Hills NSW. In 2021, Geo-Logix completed a Preliminary Site Investigation (PSI) for the property. The PSI identified numerous potential contaminating activities having</p>

Internal Referral Body	Comments
	<p>occurred onsite including:</p> <ul style="list-style-type: none"> <li>• Demolition of structures potentially containing asbestos and lead based paint;</li> <li>• Historical market gardening;</li> <li>• Importation of fill of unknown origin as part of the site redevelopment and to fill a former farm dam; and</li> <li>• Minor mechanic repairs.</li> </ul> <p>While lower levels of petroleum hydrocarbons, PAHs, OCPs and heavy metals were reported in soil, COPCs were not identified in soil at concentrations in excess of assessment criteria in all samples analysed. The risk that past site activities have contaminated on-site soils is considered low and acceptable.</p> <p>As COPCs were not detected in on-site soil and all identified sources of potential contamination at the site are 'top down' processes expected to first affect surficial soils, it is considered that the risk of contamination to on-site groundwater and surface water is also low and acceptable.</p> <p>Based on the results of investigation, the site is considered suitable for the proposed commercial development. On this basis Environmental Health supports the proposal with conditions</p>
<p>Environmental Health (Industrial)</p>	<p><b>Supported - subject to conditions</b></p> <p><b>General Comments</b></p> <p>The development the subject of this DA involves alterations and additions to the existing Hills Marketplace development located at No. 287 Mona Vale Road, Terrey Hills. The two proposed new buildings will accommodate an expanded garden centre and rural supplies outlet and a new restaurant that will include a small area for ancillary brewing equipment. In respect of the new restaurant, it is proposed that it includes a small area for ancillary brewing equipment where some craft beer will be produced on-site [quantities are discussed at page 22].</p> <p>This type of community interaction in the production stage has become very popular with restaurants today. While a small area for ancillary brewing equipment is proposed within the new restaurant, the principal purpose of the new restaurant will remain as a licensed restaurant. The operation of the brewing equipment is to provide theatre/ambience within the restaurant that will be an ancillary feature of the overall operation of the new restaurant. And Development consent is also sought to undertake minor alterations and additions throughout the ground floor level of the existing building including to the area occupied by the existing Garden Centre, Taste Buds Café and the area formerly occupied by Piemonte Restaurant and to carry out minor reconfiguration and expansion of the existing flower shop.</p> <p>The proposal seeks consent to demolish various existing structures</p>

Internal Referral Body	Comments
	<p>and at-grade parking, to undertake preparatory bulk earthworks, to remove 28 site trees, to comprehensively upgrade the site landscaping including providing substantial compensatory planting, to provide additional at grade parking and to install new business identification signage. Development consent is sought to operate a mix of land uses from the Hills Marketplace site encompassing an expanded garden centre with ancillary plant cultivation area, a new restaurant (including ancillary brewing equipment), the existing café/restaurant and a new rural supplies outlet. The existing flower shop is also proposed to continue operating from the Hills Marketplace site.</p> <p>Our areas of interest are :</p> <p><u>Noise</u>  A Noise Impact Assessment by Stantec ref: 301351061, 1/6/2023 states that the development is not expected to generate excessive noise.</p> <p>We note a residential dwelling adjacent 285 Mona Vale Road as being the most likely impacted.  The main noise sources generated by the development that may impact the local community and environment include:</p> <ul style="list-style-type: none"> <li>• Noise emissions from the operation of mechanical plant servicing the proposed development to the surrounding noise-sensitive receivers.</li> <li>• Traffic generated by the development, including, vehicle movements entering and exiting the car parking spaces provided.</li> <li>• Noise emissions from the operation of the licensed restaurant which is proposed to operate up to 12:00am.</li> </ul> <p>The proposed development has proposed the following hours of operation:  The café is proposed to operate between the hours of 7:00am – 10:00pm (7 days a week).  The proposed restaurant with ancillary brewing facilities on the south-western boundary will operate between 7:00am – 10:00pm (Sunday – Wednesday) and will extend its operation hours on Thursday – Saturday to midnight (12:00am).  All other retail tenancies have their own specific trading hours, but will operate at any point between the hours of 7:00am – 8:30pm (7days a week).</p> <p>External Dining and vehicles leaving site (eg 12.00am) are considered that main noise risk areas as other matters can be acoustically treated. Offensive noise from shouting or yelling will need robust management from the business operator. Details on managing these issues needs addressing.  Noise from equipment and plant is yet to be assessed but we consider that this can be managed during works.</p>

Internal Referral Body	Comments
	<p>A noise assessment under operating conditions is considered the best way of dealing with potential issues.</p> <p>Additionally the designated "Lawn-Landscaped Garden Common area for the enjoyment of visitors to the site and for consumption of food and beverages purchased on site "requires clarification as to whether this area will be open at night and if so what hours and if liquor is to be consumed?</p> <p><u>Sewer</u>                      The site has a septic tank and macerator pump which pumps to the private sewer line off site (Council reference WW00620 approved 11 Feb 2021 for 5 years).</p> <p>Restaurants will most likely require a grease trap to Sydney water requirements.</p> <p>The pump to sewer agreement will have restrictions and requirements which we are not privy to at this time. The increased load on this pump to sewer system and its ability to cope without failure (eg rags or other items can easily jamb macerator systems) needs to be documented. A blockage and resulting overflow of a fully occupied site is likely to cause public health and water pollution issues. A fail safe back up plan is required.</p> <p><u>Smoke/ odour /water pollution matters.</u>                      No issues anticipated.</p> <p>Environmental Health seeks further comment/detail from the applicant based on the above comments prior to any support being given to the proposal.</p> <p>ADDITIONAL INFORMATION RECEIVED AND OUR COMMENTS                      21/11/2023                      The applicant has also advised:  <i>The existing site has a septic tank. Our preliminary design includes a new sewer pump station with emergency storage.</i></p> <p><i>Restaurants will most likely require grease to Sydney water requirements. 1 x 3,000 litres noted grease arrestor is proposed.</i></p> <p><i>The pump to sewer agreement will have restrictions and requirements which we are not privy to at this time. No comment.</i></p> <p><i>The increased load on this pump to sewer system and its ability to cope without failure (eg rags or other items can easily jamb macerator systems) needs to be documented. A blockage and resulting overflow of a fully occupied site is likely to cause public health and water pollution issues. A fail safe back up plan is required.</i></p>

Internal Referral Body	Comments
	<p><i>Our fail-safe back up within the preliminary design includes a Muffin Monster preceding the new sewer pump station, plus an emergency storage tank.</i></p> <p><i>So, the internal sewerage system will have three layers of redundancy-</i></p> <ol style="list-style-type: none"> <li><i>1. Essential Power Supply</i></li> <li><i>2. Muffin Monster</i></li> <li><i>3. Emergency Storage.</i></li> </ol> <p>Henry &amp; Hymas will develop the design on behalf of the Applicant and upload to the portal for Construction Certificate.</p> <p>To progress this matter conditions of approval may be added in lieu of further submissions and therefore Environmental Health will support the proposal.</p> <p>Further update additional information received by EH 28/11/23 clarifying a number of matters that proposed draft conditions were to address. The applicant has requested that these conditions be deleted to avoid any confusion. This has been done with exception of the Plan of Management condition.</p>
<p>Environmental Health (Food Premises, Skin Pen.)</p>	<p><b>Supported - subject to conditions</b></p> <p>The provision of sanitary facilities we are advised is subject to final plans however we are concerned that as facilities are to be partly shared that we need to be satisfied that these will be adequate (including the need for urinals). Sites where facilities are not adequate or located at distance may be a potential issue. Therefore, we need to know what calculations have been done to ensure compliance with the BCA Part 4F Kitchen and food storage fit-out details compliance can be dealt with by way of conditions. Access to grease traps and sewer. This matter is dealt with under the industrial referral.</p> <p>Environmental Health cannot support the proposal at this time pending additional information.</p> <p><b>ADDITIONAL INFORMATION 21/11/2023</b></p> <p>The applicant has confirmed Sanitary Facilities complying to BCA as: <u>Existing</u></p> <p>Garden Centre 1 &amp; 2</p> <p>Ground Floor</p> <ul style="list-style-type: none"> <li>• 1 pan</li> <li>• 1 basin</li> </ul> <p>Mezzanine</p> <ul style="list-style-type: none"> <li>• 4 pans</li> </ul>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• 1 urinal</li> <li>• 4 basins</li> </ul> <p>Flower Shop / Café staff Mezzanine</p> <ul style="list-style-type: none"> <li>• 2 pans</li> <li>• 2 basins</li> </ul> <p><u>New</u></p> <p>Garden Centre Shared Amenity 2 (all tenancies have access)</p> <ul style="list-style-type: none"> <li>• 5 pans</li> <li>• 2 urinals</li> <li>• 5 basins</li> </ul> <p>Includes DDA compliant facilities</p> <p><u>Total proposed (excluding Restaurant 1).</u></p> <ul style="list-style-type: none"> <li>• 12 pans (5 male, 7 female)</li> <li>• 3 urinals</li> <li>• 12 basins (6 male, 6 female)</li> </ul> <p>The works proposed will result in a surplus of sanitary facilities, when Restaurant 1 is not operating. and advised also:</p> <p><u>Total proposed exclusively for Restaurant 1 (indicative)*</u></p> <ul style="list-style-type: none"> <li>• 7 pans (incl DDA) (2 male, 5 Female)</li> <li>• 3 urinals</li> <li>• 6 basins (incl DDA) (2 male, 4 female)</li> </ul> <p>* Note restaurant patrons will also have access to the Garden Centre shared Amenity 2, immediately adjacent.</p> <p><u>Total proposed for the development including Restaurant 1</u></p> <ul style="list-style-type: none"> <li>• 18 pans</li> <li>• 7 urinals</li> <li>• 18 basins</li> </ul> <p>The works proposed will result in a surplus of sanitary facilities. Environmental Health therefore now supports the proposal with</p>

Internal Referral Body	Comments
	<p>conditions.</p> <p>Further update additional information received by EH 28/11/23 clarifying a number of matters that proposed draft conditions were to address. The applicant has requested that these conditions be deleted to avoid any confusion ie " It is noted that fit-out of restaurant 1 will be undertaken under a separate approval pathway. This has been done and conditions adjusted accordingly.</p>
Landscape Officer	<p><b>Supported - subject to conditions</b></p> <p><u>Additional Information Comment 28/11/23:</u> The amended plans are noted and the conditions have been updated accordingly.</p> <p><u>Original Comment:</u> Landscape Referral raises concern that the proposed development does not achieve the 70% landscaped area under the WDCP requirement, and this matter shall be assessed and determined under merit consideration by the Assessing Planning Officer. Furthermore, it is noted that the calculations shown on drawing A100-20 DA-6 include permeable parking and walkways. Not including these non-compliant areas, the landscaped area (or landscape open space) is in fact 51%. The commentary from the Landscape Referral team in the PLM notes was "...the use of permeable pavers is not accepted as being part of the LOS for the purpose of the LOS calculation and should only be used as a complimentary feature to further enhance the site". Finally, some accessible carparking spaces are shown within permeable areas, and Landscape Referral questions the suitability of their location.</p> <p>The PLM notes stated "<i>It is advised that Landscape team will seek a landscape outcome to preserve / establish a boundary landscape buffer to the cultivation area boundaries</i>". Should the development application be approved, an amended Landscape Plan shall be submitted which includes a landscape buffer along the north-eastern boundary for the full extent of the cultivation area, and shall be a minimum width of 3 metres as measured perpendicular to that boundary.</p> <p>The Arboricultural Impact Assessment (AIA) identified 28 trees for removal, of which 15 trees (3, 8, 9, 11, 16, 22, 23, 24, 25, 27, 28, 29, 30, 31, and 32) are exempt by species or height and as such do not require consent for removal. Of the 13 remaining trees seven are exotic species and six are native. These remaining 13 trees can be supported for removal, and the landscape proposal shows 14 replacement native trees which will sufficiently offset any tree canopy loss. Landscape Referral supports the tree protection recommendations outlined in the AIA, and a Project Arborist shall be engaged to supervise the works in the tree protection zone of trees to be retained, subject to the imposed conditions.</p>

Internal Referral Body	Comments
<p>NECC (Bushland and Biodiversity)</p>	<p><b>Supported - subject to conditions</b></p> <p>The proposal seeks approval for Alterations and additions to the existing Hills Flower Market site.</p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> <li>• NSW Biodiversity Conservation Act 2016</li> <li>• Planning for Bushfire Protection 2019</li> <li>• Warringah DCP - Clause E2 Prescribed Vegetation</li> </ul> <p>The proposal has been submitted with an Arboricultural Impact Assessment (AIA) that has assessed a total of 47 trees and determined that a total of 3 high category trees (2, 4 and 5) and another 25 low category trees would have to be removed in order to facilitate the proposed alterations and additions (1, 3, 8, 9, 10, 11, 12, 14, 15, 16, 18, 20, 22, 23, 24, 25, 27, 28, 29, 30, 31, 21, 33, 34 and 35). Of these 28 trees a total of 7 trees are prescribed (4, 18, 20, 22, 33, 34 and 35). The submitted Tree management plan (pages 27 and 28 of the AIA) shows another 6 additional trees have been removed before the submission of the application.</p> <p>The submitted Bushfire report that has determined that the level of risk to be awarded to the site is BAL 12.5. The BF report has also determined that the existing Asset Protection Zones (APZ) are compliant with PBP 2019 requirements. Therefore, no additional vegetation removal will be required for the establishment of APZs.</p> <p>The proposed Landscape Proposal includes a total of 14 native trees and a range of native shrubs, groundcovers and climbers which are found to be adequate for the area.</p> <p>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
<p>NECC (Development Engineering)</p>	<p><b>Supported - subject to conditions</b></p> <p>The proposal includes the removal of the existing on-site stormwater detention (OSD) basin and replaces this with a new combined OSD/ Water Quality basin adjacent to the proposed restaurant on the south western boundary of the site. The submitted engineering plans have been reviewed and the following information must be submitted for further assessment.</p> <ol style="list-style-type: none"> <li>1. The 'Drains' computer model for the design must be submitted by the applicant's engineer.</li> <li>2. A summary table for the OSD design is to be provided on the drawings.</li> <li>3. Hydraulic Grade Line Analysis for the connection into the existing easement pipe.</li> </ol>



Internal Referral Body	Comments
	<p>4. Dimensions of the basin to ensure required volume is achieved.</p> <p>5. An overflow is to be provided above the Top Water Level in case of a blockage to the orifice.</p> <p>6. The proposed detention basin exceeds 300mm in depth and as such must include a fence around the perimeter for safety.</p> <p>7. It is unclear how access for maintenance of the basin is proposed. Details for access must be shown on the plans.</p> <p>The submitted Geotechnical report references the incorrect plans which detail a basement which does not appear to be included on the architectural plans. It is considered that the report be amended to reflect the correct plans and must also reference the civil engineering plans.</p> <p>The existing driveway access points are to remain which is acceptable.</p> <p>Development Engineering cannot support the proposal due to insufficient information to dress stormwater management in accordance with Clause C4 of the DCP.</p> <p><b>Amended plans and documentation submitted 28/11/2023</b></p> <p>The revised stormwater management plans and model have addressed the previous issues. The Geotechnical report has also been amended as requested.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p> <p><b>02/05/2024:</b></p> <p>Amended stormwater plans reflecting boundary setback to 2.5m are provided, no objections to approval subject to conditions as recommended.</p>
NECC (Water Management)	<p><b>Supported - subject to conditions</b></p> <p>02/05/2024:</p> <p>Amended stormwater plans reflecting boundary setback to 2.5m are provided, no objections to approval subject to conditions as recommended.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Relevant LEP and DCP clauses; and</li> <li>• Northern Beaches Water Management for Development Policy</li> </ul>

Internal Referral Body	Comments
	The proposed stormwater management strategy is satisfactory.
Road Reserve	<p><b>Supported - without conditions</b></p> <p>There are no apparent works on the road reserve or impacts on existing road assets therefore no comments are provided.</p>
Strategic and Place Planning (Urban Design)	<p><b>Supported - without conditions</b></p> <p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The application DA2023/0803 seeks consent for alterations and additions to the existing Hills Marketplace development located at No. 287 Mona Vale Road, Terrey Hills. The following is proposed:</p> <ul style="list-style-type: none"> <li>• Demolition of some buildings, carparking and landscape;</li> <li>• Re-grading of part of the site;</li> <li>• Re-designed landscape;</li> <li>• Alteration to existing buildings;</li> <li>• Two new buildings to accommodate a larger garden centre.</li> </ul>
Traffic Engineer	<p><b>Supported - subject to conditions</b></p> <p><u>Additional comments on amended plans - 28/11/23</u></p> <p>Amended plans have been received which slightly reduce the level of offstreet parking from 188 to 182 spaces. The proposed level of parking still exceeds the DCP requirements with the previous referral comments and conditions still valid</p> <p><u>Original comments - 3/10/23</u></p> <p>The development application is for alterations and additions to the existing Hills Marketplace garden. The existing development on the site is comprised of a Plant Nursery/Flower Shop (1685m<sup>2</sup>), Rural Supplies premises (570m<sup>2</sup>), a cafe/restaurant (seating capacity for 86 patrons), ancilliary offices, a house and offstreet parking to support the existing uses.</p> <p>The proposed development will have an expanded garden centre (1042m<sup>2</sup>) Flower Shop (473.6m<sup>2</sup>), Rural supplies (350.7m<sup>2</sup>), a second restaurant will be added with a total restaurant seating</p>

Internal Referral Body	Comments
	<p>capacity of 366 seats (711m<sup>2</sup>) and ancilliary offices (235.9m<sup>2</sup>). A total of 188 car spaces will be available to support the uses with 5 loading bays/servicing bays catering for small and medium rigid trucks.</p> <p><u>Traffic Generation</u></p> <p>The applicants traffic consultant has conducted surveys of traffic movements to and from the site to establish the existing traffic generation from the site, the traffic consultant has then revised these values to take account of traffic generated by the alterations and additions on the site to estimate the post development traffic generation. It has bene estimated that the peak projected traffic generation from the site of post development will be 201 vehicles per hour in the weekend midday period however the weekend peak will only increase by 2 vehicles per hour above existing volumes. The largest increase in traffic generation from the site post development is anticipated to occur in am peak period with 25 additional traffic movements per hour.</p> <p>SIDRA analysis conducted for a number of intersections surrounding the development has revealed little change to the level of service or delays at the intersections and on this basis the traffic generation from the site post development is not a matter of concern.</p> <p><u>Parking.</u></p> <p>The development will be swerved by 188 car parking spaces including 39 in an existing basement level. Six of the 188 spaces are accessible parking spaces. There are also 3 motorcycle parking spaces, 2 medium rigid vehicle service bays and 3 Small Rigid Vehicle service bays.</p> <p>In terms of DCP requirements the development requires:</p> <p>1 parking space for every 3 seats for the restaurant uses i.e <math>336/3 = 112</math> car spaces          6.1 spaces per 100m<sup>2</sup> GLFA (retail) for the flower shop i.e <math>473.6*6.1/100 = 29</math> spaces</p> <p>For the garden centre and rural supplies uses the Warringah DCP suggests that Landscape and Garden supplies developments should provide 15 spaces or 0.5 spaces per 100m<sup>2</sup> of site area. These rates are considered likely to underestimate parking demands for this type of use which is more appropriately assessed as bulky goods retail.</p> <p>1.9 spaces per 100m<sup>2</sup> GFA (bulky goods retail) for the garden centre = <math>1042*1.9/100 = 20</math> spaces          1.9 spaces per 100m<sup>2</sup> GFA (bulky goods retail) for the rural supplies = <math>350.7*1.9/100 = 7</math> spaces</p> <p>1 space/40m<sup>2</sup> for the ancilliary office uses = <math>235.9/40 = 6</math> spaces</p>

Internal Referral Body	Comments
	<p>Total parking requirement = 112 + 29 + 20 + 7 + 6 = 174 spaces.</p> <p>The parking provision of 188 spaces exceeds this requirement. The developer proposes that 6 of these spaces (3%) be accessible which is supported. The accessible parking spaces appear to be sized and marked in accordance with AS2890.6 however this will be conditioned.</p> <p><u>Vehicle Access</u></p> <p>No changes are proposed to the the existing vehicular access arrangements with separate entry and exit driveways to remain accessible from Mona Vale Road and a third vehicle ingress/egress driveway to remain available via a right of way to Myoora Road. The retention of the vehicle access points to Mona Vale Road, a State Road, has not been opposed by Transport for NSW (TfNSW) and as such their retention is supported. The swept path plots provided in the traffic report show trucks entering and exiting via the Mona Vale Road Entry driveway which is inadequately sized to allow for passing of an egressing medium rigid truck and entry of a B85 vehicle, permitting truck egress by this driveway would therefore be unsafe. The driveways to Mona vale Road should therefore be marked and signposted as Entry and Exit driveways to clarify any confusion. This will be conditioned.</p> <p><u>Servicing</u></p> <p>The RMS Guide to traffic generating developments encourages developers to provide separate driveways for truck access and passenger vehicle access. This development provides no separation of service vehicles from customer vehicle traffic which may result in vehicle to vehicle conflict and safety concerns particularly for movements involving reversing trucks in areas of high pedestrian activity such as customer carparking areas.</p> <p>The service/delivery bays are each sized to cater for movements only by small and medium rigid vehicles (MRVs) less than 8.8m in length. It is noted in the traffic report that some deliveries/servicing by trucks greater than 8.8m will occur but that these generally take place prior to 7am and after 4pm. The restaurant uses, which are proposed to occur into the evening will mean that customers will still be parking on site after hours. To minimise conflict between customer movements and deliveries by vehicles in excess of 8.8m in length it will be conditioned that vehicles larger than 8.8m MRV's access the site only via Myoora Road after 10pm and before 6am to minimise conflict with customer vehicles or pedestrians. In addition, to cater for afterhours turning by vehicles up to the size of 14.8m semi-trailers it will be conditioned that a No Parking zone applying 6pm to 7am to be signposted throughout the 15 bay 90 degree parking areas denoted Zone 13 &amp; Zone 15 on the DA plan No. A100-20 DA-6</p>

Internal Referral Body	Comments
	A revised Loading and Service Vehicle Management Plan will also be conditioned to ensure that the above requirements are captured.
Waste Officer	<b>Supported - subject to conditions</b>  Waste Management Assessment

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<b>Supported - subject to conditions</b>  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.
Roads and Maritime Service - SEPP (Transport and Infrastructure) 2021, s2.122 - Traffic generating development	<b>Supported - subject to conditions</b>  The proposal was referred to Transport for NSW (TfNSW) who provided a response stating that the proposal is acceptable subject to the following requirements:  <ol style="list-style-type: none"> <li>1. <i>Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system that impact upon Mona Vale Road are to be submitted to TfNSW for approval, prior to the commencement of any works.</i>  <i>A plan checking fee will be payable, and a performance bond may be required before TfNSW approval is issued.</i></li> <li>2. <i>A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on the Mona Vale Road during construction activities.</i></li> </ol> These recommendations will be included as a condition of consent.

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

All, Environmental Planning Instruments (SEPPs 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 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 (Transport and Infrastructure) 2021**

**Ausgrid**

Section 2.48 of Chapter 2 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.

**Transport for NSW (TfNSW)**

Section 2.118 - Development with frontage to classified road states:

*The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
  - (i) the design of the vehicular access to the land, or*
  - (ii) the emission of smoke or dust from the development, or*
  - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

**Comment:**

The application was referred to Transport for NSW who did not raise any objection to the proposal.

Section 2.121 and Schedule 3 of this Policy requires that the following development(s) are referred to the TfNSW as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Commercial premises	10,000m <sup>2</sup> in area	2,500m <sup>2</sup> in area
Shops and commercial premises	4,000m <sup>2</sup>	1,000m <sup>2</sup>

**Note:** Under Section 2.121(2) of Chapter 2, 'relevant size of capacity' is defined as meaning:

*“(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*

*(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.”*

Comment:

The site is accessed via Mona Vale Road, which is a classified road and has an area greater than 2,500m<sup>2</sup> and is therefore traffic generating development.

The application was referred to Transport for NSW who responded and did not raise any objection to the proposal.

**SEPP (Industry and Employment) 2021**

Section 3.6 and 3.11 of Chapter 3 require Council to determine consistency with the objectives stipulated under Subsection 3.1 (1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 5.

The objectives of this chapter aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

The proposal comprises nine (9) illuminated business identification signs associated with the businesses to operate from Hills Marketplace. This includes the installation of eight (8) new wall signs, and one (1) freestanding sign. It is noted that that the new signage largely relates to upgrading internal wayfinding signs. Proposed signage that is street facing and/or visible from any public place consists of two signs listed below:

- S3 - Wall sign for new restaurant: 2.4m (L) x 2.4m (H). Painted with external illumination.
- S9 - Freestanding building identification sign: 2.4m (L) x 1.2m (H). Not illuminated.

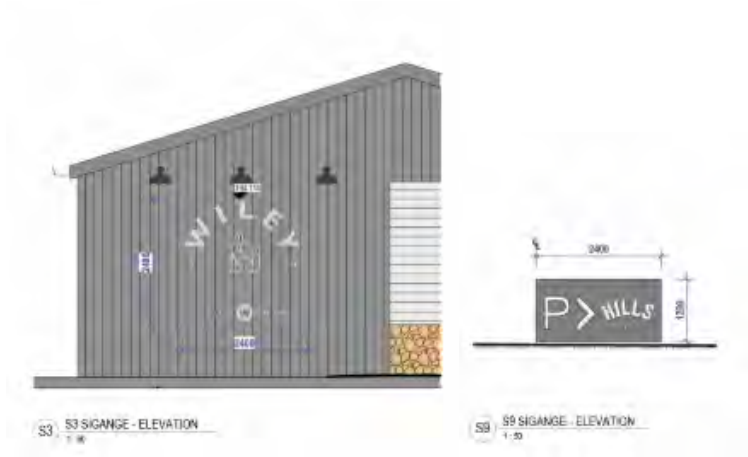


Figure 1. Signage details

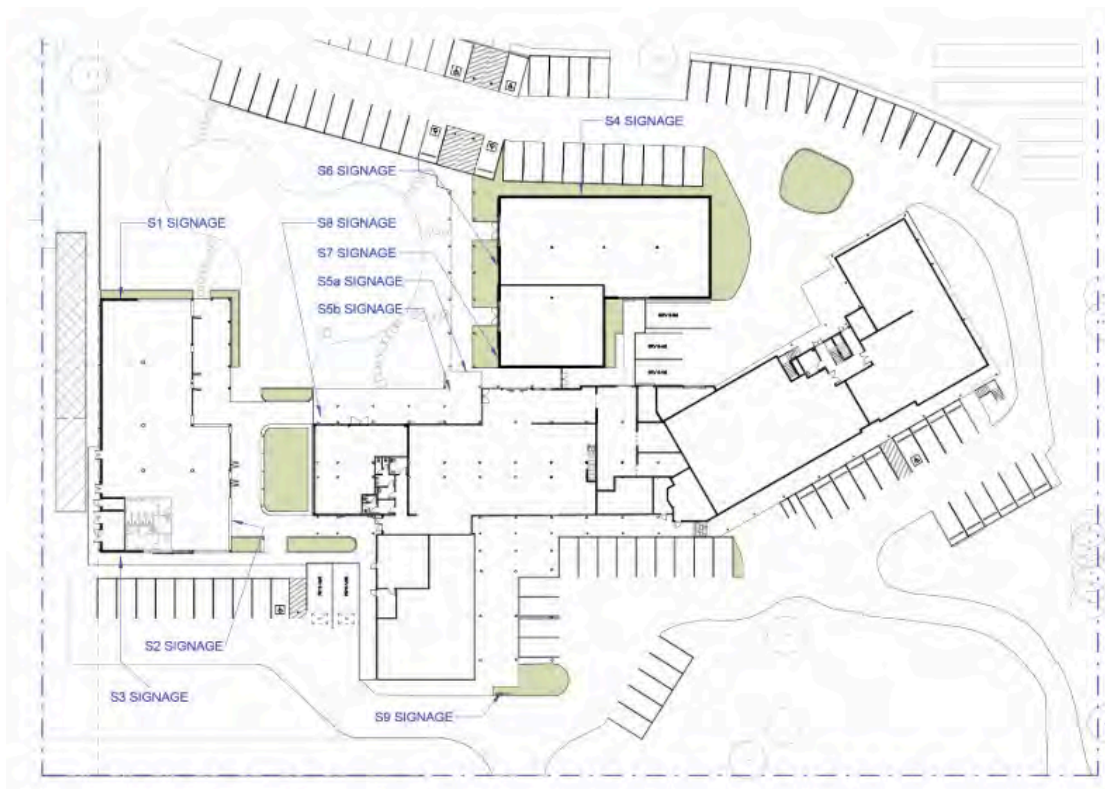


Figure 2. Signage Map

In accordance with the provisions stipulated under Schedule 5 of Chapter 3, the following assessment is provided:

Matters for Consideration	Comment	Complies
<b>1. Character of the area</b> Is the proposal compatible with the existing or	It is considered the proposed signage is compatible with the existing and	YES



desired future character of the area or locality in which it is proposed to be located?	desired future character of the locality.	
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposed signage is consistent with the theme for the site, and the signage is to identify the nature of the businesses operating within Hills Marketplace.	YES
<b>2. Special areas</b> Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposed signage is not likely to detract from the amenity, or visual quality of the site. The signage is located within the site boundaries, and is not considered to impact upon any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas.	YES
<b>3. Views and vistas</b> Does the proposal obscure or compromise important views?	The proposed signage will not obscure, or comprise important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage is not of a scale that will will dominate the skyline, or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposed signage will not impact upon any viewing rights of other advertisers.	YES
<b>4. Streetscape, setting or landscape</b> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion of form of the proposed signage is consistent with the streetscape, setting, and landscape of the site.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage contribute to the visual interest of the setting, and landscape. The proposed signage is located within the subject site, and therefore will not impact upon the streetscape.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed signage upgrades are considered to simplify the existing signage.	YES
Does the proposal screen unsightliness?	The proposed signage is not used as a visual screen, and does not screen unsightliness.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signage will not protrude above buildings, or above structures or tree canopies.	YES
Does the proposal require ongoing vegetation management?	The proposed signage does not require ongoing vegetation management.	YES
<b>5. Site and building</b> Is the proposal compatible with the scale,	The proposed signage is compatible with the scale, proportion, and	YES

proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	characteristics of the site and building on which the proposed signage is to be located.	
Does the proposal respect important features of the site or building, or both?	It is considered the proposed signage will not impact upon any important features of the site or building.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signage has been designed to respect the existing built form relationship, and complement its design by providing appropriate business identification.	YES
<b>6. Associated devices and logos with advertisements and advertising structures</b> Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The proposed signage does not include any safety devices, or platforms.	YES
<b>7. Illumination</b> Would illumination result in unacceptable glare? Would illumination affect safety for pedestrians, vehicles or aircraft? Would illumination detract from the amenity of any residence or other form of accommodation?	The business identification signs will have a low level of illumination limited to the lettering, graphics and logos which will be controlled by a timer to turn on during the operating hours of the associated business.	YES
Can the intensity of the illumination be adjusted, if necessary?	The illumination of of the signage is low-level. In addition, given the significant distance from any residential accommodation it is not likely to result in adverse amenity impacts.	YES
Is the illumination subject to a curfew?	The signage will only be illuminated during the operating hours of the associated business.	YES
<b>8. Safety</b> Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposed signage would not reduce the safety for any public road, pedestrians or bicyclists given the signs are located within the site boundaries.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage would not reduce the safety for pedestrians including children, as there are no sightlines that are obscured as a result of the signage.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of this chapter and its underlying objectives.

**SEPP (Resilience and Hazards) 2021**

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the consent authority to consider whether land is contaminated.

In response to the above requirements of Chapter 4, the applicant has submitted a Preliminary Environmental Site Investigation dated 8 November 2022 and prepared by Geo-Logix Pty Ltd. In its conclusion, the investigation states:

*The results of the assessment did not identify any conditions requiring the site to be remediated. The site is considered suitable for the proposed redevelopment.*

In this regard, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions 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	8.3m (Restaurant 1) 5.6m (Garden Centre 4) 4.0m (Rural Supplies) 3.9m (Garden Centre 3)	N/A	Yes

Permissibility

The proposal seeks consent for a variety of uses, while also expanding upon existing uses within the site. The proposed *Food and Drink Premise* (restaurant 1), *Garden Centre* (garden centres 3 & 4), and *Landscaping Material Supplies* (rural supplies) are permissible uses pursuant to Schedule 1 of WLEP 2011, as discussed further in Section 2.5 of this report. Additionally, the proposal involves the minor expansion and reconfiguration of the existing flower shop. Since *Shops* are prohibited land use within the RU4 Primary Production Small Lots zone under WLEP 2011, this aspect has been elaborated upon in the 'Existing Use Rights' section of this report.

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

**2.5 Additional permitted uses for particular land**

The site falls within Schedule 1 Additional Permitted Uses - Area 18 pursuant to the WLEP 2011 which reads:

*18 Use of certain land in the vicinity of Mona Vale and Myoora Roads, Terrey Hills*

*(1) This clause applies to land in the vicinity of Mona Vale and Myoora Roads, Terrey Hills, shown as "Area 18" on the Additional Permitted Uses Map.*

*(2) Development for the purposes of educational establishments, garden centres, hospitals, hotel or motel accommodation, places of public worship, recreation areas, recreation facilities (indoor), recreation facilities (outdoor), registered clubs and restaurants or cafes is permitted with consent.*

A "Garden Centre" is defined as:

*garden centre means a building or place the principal purpose of which is the retail sale of plants and landscaping and gardening supplies and equipment. It may include a restaurant or cafe and the sale of any of the following—*

- (a) outdoor furniture and furnishings, barbecues, shading and awnings, pools, spas and associated supplies, and items associated with the construction and maintenance of outdoor areas,*
- (b) pets and pet supplies,*
- (c) fresh produce.*

*Note: garden centres are a type of retail premises—see the definition of that term in this Dictionary.*

Comment:

The proposal's predominant use is appropriately defined as a garden centre and is therefore permitted with consent in the RU4 zone pursuant to Schedule 1. Furthermore, the proposal includes a new restaurant that incorporates an area for ancillary brewing equipment. This brewing component is viewed as supplementary to the restaurant's main function, given its small size and scale, and therefore does not constitute a large-scale production operation.

**Zone RU4 Primary Production Small Lots**

Land use definition: WLEP 2011	Permitted or Prohibited
<b>shop</b> means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted premises	Prohibited

The proposal involves the minor expansion and reconfiguration of the existing flower shop. Under WLEP 2011, shops are a prohibited land use within the RU4 Primary Production Small Lots zone.

However, the application relies on existing use rights, as the shop was approved (Development Consent: DA2004/1012, dated 31 January 2006) prior to WLEP 2011 coming into force.

Refer to the detailed discussion under 'Existing Use Rights'.

As existing use rights have been established to apply to the land and the development, the proposal is therefore permissible with consent, notwithstanding the prohibition that applies in the zone.

The underlying objectives of the RU4 Primary Production Small Lots zone

- *To enable sustainable primary industry and other compatible land uses.*

Comment:

The retention of the existing shop is supported, and the retention of this land use is not in considered inappropriate adjacent to residential properties.

- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*

Comment:

The development will necessitate the employment of persons in a variety of different roles which is supported.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

Comment:

The presence of a garden centre adjacent to various land uses on adjoining sites is not considered to generate any unreasonable conflicts - particularly noting such a relationship has existed for more than 20 years.

- *To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.*

Comment:

It is not considered that the development will impact on long and short distance views.

- *To maintain and enhance the natural landscape including landform and vegetation.*

Comment:

The proposal's enhanced landscaping design will complement the natural landscape including landform and vegetation, particularly along the Mona Vale Road frontage.

- *To ensure low intensity of land use other than land uses that are primary industry enterprises.*

Comment:

The predominate uses proposed on site all fall within the definition of a garden centre and are permitted with consent in the zone. The intensity of the uses are considered to be acceptable and compatible within the immediate locality.

- *To maintain the rural and scenic character of the land.*

Comment:

The proposal involves substantial landscaping works to enhance the it's scenic qualities and complement the surrounding rural character.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

## 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, WDCP and the objectives specified in s.5(a)(i) and (ii) 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 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 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	5.9m (Restaurant 1)	N/A	Yes
B4 Site Coverage	20% (4000m <sup>2</sup> )	19% (3833.1m <sup>2</sup> )	N/A	Yes
B5 Side Boundary Setbacks	7.5m - North	14.5m (Carpark)	N/A	Yes
	7.5m - South	2.5m (Underground bio-basin) 3.5m (Reversing bay) 7.5m (Restaurant 1)	66.7% 53.3% N/A	No No Yes
B9 Rear Boundary Setbacks	7.5m	5.0m (Carpark)	33.3%	No
B14 Main Roads Setback	30.0m (Buildings/signs)	30.0m (Restaurant 1) 10.8m (Signage)	N/A 64%	Yes No
	15.0m (Parking)	15.0m (Carpark)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	70%	51.1% (10,216.7m <sup>2</sup> )	27%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B4 Site Coverage	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
B14 Main Roads Setback	No	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	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



Clause	Compliance with Requirements	Consistency Aims/Objectives
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D23 Signs	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

**B5 Side Boundary Setbacks**

**Description of Non-compliance**

Clause B5 requires development to provide a minimum side setback of 7.5m.

The development provides a minimum side setback of 2.5m to the southern boundary, which results in a variation of 66.7% (i.e. 5.8m). The non-compliant element is an underground bio-basin, which is largely below existing ground level.

In addition, the proposed at-grade reversing bay provides a minimum southern side setback of 3.5m.

The figure below indicates the areas of non-compliance.

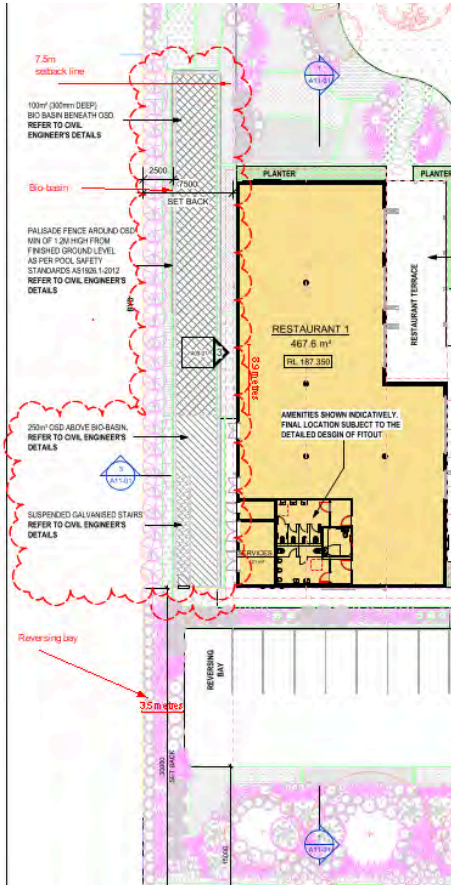


Figure 3. Southern boundary side setback non-compliance

**Merit Consideration**

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

- *To provide opportunities for deep soil landscape areas*

Comment

The proposal involves a slight increase of deep soil landscaping by 6.7% (1,320.3m<sup>2</sup>).

The reduced side setback as amended is landscaped by trees and shrubbery to provide suitable screening. Therefore, the reduced setback does not limit the provision of opportunities for deep soil landscape areas.

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

Comment

The proposed encroachments within the southern side setback are consistent with the existing

and nearby developments by virtue of their location within the subject site's southwest corner. The non-compliant elements low-lying and are situated at a significant distance from the frontage and adjacent buildings. Furthermore, the amended landscape plan seeks to heavily vegetate the intervening area between these setbacks. As such, the structure will not appear visually dominant when viewed from the street or surrounding properties.

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

Comment

The non-compliant elements are low-lying such that it would not add to the scale and bulk of the development.

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

Comment

The site is adjoined by a function centre on No.48 Myoora Road that also has a reduced landscaped buffer due to the existing driveway. Notwithstanding, suitable separation between buildings is provided and the nature of the structures proposed within the side setback are not considered to give rise to any unacceptable amenity impacts.

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

Comment

The non-compliant elements are low-lying and will not obstruct existing views from or to public and private properties.

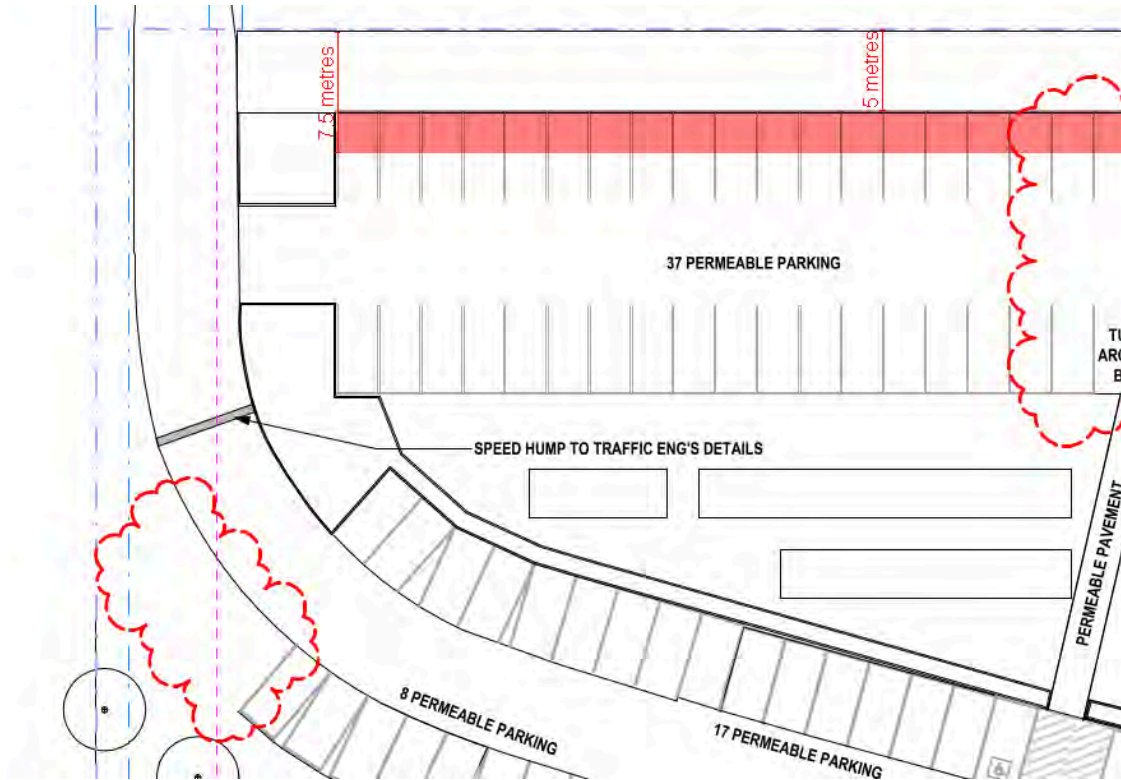
Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

## **B9 Rear Boundary Setbacks**

### **Description of Non-compliance**

The proposed permeable parking area provides a minimum rear setback of 5.5m. The control requires a minimum rear setback 7.5m.

The non-compliance is diagrammatically displayed below:



**Figure 4. Rear setback non-compliance**

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 proposal provides a sufficient deep soil landscape area to the rear of the site.

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

Comment:

As above, the proposal being an at-grade uncovered car park represents a minor encroachment within the rear setback with the majority of areas being open and landscaped, which allows for a reasonable sense of openness within the rear yard.

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

Comment:

Adequate deep soil landscaping is proposed along the rear boundary, which will allow for suitable opportunities for the establishment of planting that is of a size and scale to screen the development from adjoining properties. In addition, the works are substantially set back from adjoining buildings, which mitigates any unacceptable visual and aural privacy impacts. Therefore, the proposal has been designed appropriately to preserve neighbourhood amenity.

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

Comment:

The proposal will not disrupt or compromise the existing visual continuity and pattern of buildings, rear gardens or landscape elements due to its minimal elevation and minor encroachment within the rear setback.

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

Comment:

As above, the proposal has been adequately designed and sited to maintain privacy between dwellings.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

### **B14 Main Roads Setback**

#### **Description of Non-compliance**

Part B14 requires that development shall be setback 30m from the boundary perpendicular to Mona Vale Road. The clause also includes an exception provision which permits ground level car parking between 15m and 30m from the road boundary, provided that views of the car park from the main road are screened by landscaping. The control also requires that no signs are to be erected in the 30m front setback area.

The proposal fails to achieve compliance with the numerical requirements of the control. A freestanding sign is proposed approximately 10.8m from the boundary.

Car parking is proposed within the area 15m to 30m from the subject site's southeast corner. This represents a significant improvement over the current car park, which is located just 4.9m from the frontage. The increased setback enables the establishment of substantial plantings to effectively screen the proposed car park.

#### **Merit Consideration**

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

- *To provide a densely landscaped buffer between the development and the main road/s.*

Comment:

The proposal (as amended) has been designed to minimise carparking in the front setback to provide a densely landscaped buffer along the Mona Vale Road frontage. The proposed sign is located within an existing planter bed and will not require the removal of any significant vegetation. Overall, the proposal will maintain and enhance, through additional planting, the existing landscaped buffer provided between the development and Mona Vale Road.

- *To enhance the aesthetic quality of main roads.*

Comment:

As detailed above, the proposal will provide additional landscaping along the Mona Vale Road frontage which will enhance the aesthetic quality of Mona Vale Road.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

### **C3 Parking Facilities**

An assessment of the car parking provisions, having regard to the requirements under WDCP 2011 and the TfNSW Guide to Traffic Generating Development has been undertaken (See Traffic Referral for further comments).

In summary, the proposed development provides on-site car parking for 182 vehicles, which exceeds the parking requirement of 174 spaces for the proposed development.

### **D1 Landscaped Open Space and Bushland Setting**

#### **Description of Non-compliance**

Clause D1 requires a Landscaped Open Space (LOS) area of 70%.

The control provides the following advice, when measuring these area:

- a) Driveways, paved areas, roofed areas, tennis courts, car parking and stormwater structures, decks, etc, and any open space areas with a dimension of less than 2 metres are excluded from the calculation;*
- b) The water surface of swimming pools and impervious surfaces which occur naturally such as rock outcrops are included in the calculation;*
- c) Landscaped open space must be at ground level (finished); and*
- d) The minimum soil depth of land that can be included as landscaped open space is 1 metre.*

In this regard, the proposed permeable car parking and any open space areas with a dimension of less than 2.0m are excluded from this calculation. Consequently, the calculable area amounts to 51.1% (10,216.7 m<sup>2</sup>) of the total site area.

The proposal will increase the site's deep soil landscaped area by approximately 6.7% (1,320.3 m<sup>2</sup>),

from 44.4% (8,896.4 m<sup>2</sup>) to 51.1%.

**Merit Consideration**

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

Despite the breach of deep soil landscape open space requirements sufficient planting is retained and enhanced to enhance the streetscape along Mona Vale Road.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The proposal will have no adverse impact on the topographical features and habitat for wildlife. Direct biodiversity impacts are limited to tree removal, involving the removal of 28 trees, of which 15 trees are exempt by species or height. The landscape plan proposes 15 replacement native trees, which will sufficiently offset any tree canopy loss. The proposal has also been reviewed by Council's Natural Environment departments, who raised no objections, subject to the recommended conditions of consent.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

The landscape proposal incorporates a variety of landscape treatments to the area of the development works, including tree and mass planting to the front setback zone of the property to soften the built form.

- *To enhance privacy between buildings.*

Comment:

The siting of the development will ensure there are no adverse visual and acoustic privacy impacts on neighbouring sites.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The proposal will continue to provide appropriate outdoor areas that meet the needs of the patrons and staff.

- *To provide space for service functions, including clothes drying.*

Comment:

The proposal allows for sufficient space for the service function of the garden centre including equitable and safe access for patrons and staff.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

Council's Development Engineer has confirmed that there are no objections to the proposed water management subject to conditions.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

### **D3 Noise**

An Acoustic Assessment (dated June, 2023) of the proposed development has been carried out by Stantec and accompanies the development application.

The assessment has predicted noise impacts at the most sensitive boundary positions. The calculations show that all the relevant criteria (as provided for in the WDCP 2011 and EPA NSW Industrial Noise Policy) for noise emissions will be met.

The assessment concludes that *'the development and its proposed site are not expected to generate or be exposed to excessive noise or vibration'*.

Council's Environmental Health Officer has also reviewed the Acoustic Report and has raised no objections to approval, subject to conditions.

### **D8 Privacy**

#### **Merit Consideration**

The submission received raised privacy as a concern, particularly, with regard to the proposed restaurant located within the subject site's southeast corner.

Accordingly, 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 restaurant is single storey located 7.5m from the southern side boundary and approximately 21.0m from the nearest building, commonly known as Miramare Gardens. The



proposed restaurant and outdoor seating areas are orientated to the north, with limited openings directed toward the southern side boundary. In addition, the southern side setback is landscaped by trees and shrubbery to provide suitable screening.

The Acoustic Report dated June 2023 that accompanies the application demonstrates that the proposal will preserve an acceptable level of acoustic privacy. Council's Environmental Health Officer has also reviewed the Acoustic report. The Environmental Health officer has raised no objections to approval, subject to conditions, including additional certification of acoustic requirements.

Overall, the proposal as conditioned will provide a high level of visual and acoustic privacy for occupants and neighbours.

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

Comment:

The proposal includes a comprehensive landscape design that will enhance the presentation of the subject site within the urban environment and will provide a more scenic frontage in keeping with the rural character character of Mona Vale Road.

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

Comment:

The proposal will ensure personal and property security will be maintained.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

### **D23 Signs**

A detailed assessment of the proposed signage has been provided earlier in the report in relation to Chapter 3 of SEPP (Industry and Employment) 2021.

The assessment indicates that the signage is appropriate and consistent with the provisions under SEPP (Industry and Employment) 2021.

Similarly, it is considered that the proposed signage is consistent with the objectives of Part D23 of the Warringah DCP 2011.

### **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 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$97,295 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$9,729,500.

## **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 2021;
- 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 EPs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

## **PLANNING CONCLUSION**

In conclusion, the development application under review seeks consent for substantial alterations and additions to the existing Hills Flower Market (Garden Centre), inclusive of signage enhancements.

The application's referral to the Development Determination Panel (DDP) arises from the receipt of more than five submissions, predominantly objections, with one submission in support among the total of seven received. Concerns voiced primarily revolve around traffic and amenity impacts, specifically citing the loss of acoustic privacy, alongside considerations regarding permissibility, landscaped area, stormwater, and excavation.

Importantly, the proposal does not necessitate variations to principal development standards under the Warringah Local Environment Plan (WLEP) 2011. Critical assessment issues, encompassing

concerns from submissions and non-compliance with various setback and landscaped area controls, have been addressed satisfactorily through the submission of amended plans.

Variations to the Development Control Plan (DCP) controls are deemed acceptable within the site's context, with significant enhancements proposed, including streetscape landscaping, building rationalisation, environmental management upgrades, and compliant parking solutions to accommodate additional floorspace/uses.

Concerns raised by Council regarding surplus parking spaces and inadequate landscaped area have been successfully mitigated through amendments, including surplus parking removal and incorporation of additional deep soil landscaping across the site.

The proposal entails the expansion and reconfiguration of tenancies within the existing Hills Flower Market, resulting in a reduction of Gross Floor Area (GFA) alongside the inclusion of a new detached restaurant. Despite this increase, the proposed use of the site aligns with zone objectives and broader locale considerations, as extensively discussed in the report.

Furthermore, the proposal seeks alterations to a *shop*, prohibited under the WLEP 2011 zoning, however, benefits from Existing Use Rights.

Following a comprehensive assessment, the proposal demonstrates consistency with the objectives of relevant standards and controls, with no substantial issues warranting refusal. Hence, this report concludes with a recommendation for the DDP to grant **APPROVAL** to the development application, contingent upon specified conditions.

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 DA2023/0803 for Alterations and additions to the existing Hills Flower Market site on land at Part Lot 1 DP 845094, 287 Mona Vale Road, TERREY HILLS, subject to the conditions printed below:

**Terms and Reasons for Conditions**

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

**GENERAL CONDITIONS**

1. **Approved Plans and Supporting Documentation**  
Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan

A01-01	3	Demolition Plan - Site Plan	BN Group	24 May 2023
A01-02	3	Demolition Plan - Ground Floor Plan	BN Group	24 May 2023
A01-10	3	Demolition Plan - Roof Plan	BN Group	24 May 2023
A01-30	3	Demolition Plan - Elevations	BN Group	24 May 2023
A01-40	3	Demolition Plan - Sections	BN Group	24 May 2023
A02-01	9	Proposed - Site Plan	BN Group	22 April 2024
A02-20	8	Proposed - Ground Floor Plan	BN Group	22 April 2024
A02-21	6	Proposed - Mezzanine Plan	BN Group	22 April 2024
A02-40	6	Proposed - Roof Plan	BN Group	22 April 2024
A09-01	6	Proposed - Elevations	BN Group	22 April 2024
A11-01	6	Proposed - Sections	BN Group	22 April 2024
A60-01	3	Proposed - Signage	BN Group	24 May 2023
A70-01	3	Proposed - Material Sample Board	BN Group	24 May 2023

<b>Approved Reports and Documentation</b>			
<b>Document Title</b>	<b>Version Number</b>	<b>Prepared By</b>	<b>Date of Document</b>
Access Report	3	Morris Goding Access Consulting	26 May 2023
Arboricultural Impact Appraisal and Method Statement	A	Naturally Trees Arboricultural Consulting	15 May 2023
BCA Assessment Report	R3.0	Steve Watson and Partners	29 May 2023
Bushfire Protection Assessment	B213699 - 1	Australian Bushfire Protection Planners	20 October 2022
Detailed Site Investigation Report	V01	Geo-Logix	8 November 2022
Geotechnical Report	V03	Geo-Logix	24 November 2023
Noise Impact Assessment	004	Stantec	1 June 2023
Transport Assessment	07	Ason Group	15 June 2023

Waste Management Plan	-	Mainbrace Constructions	-
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In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

**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	5 June 2023
Transport for NSW	TfNSW Referral Response	17 July 2023

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council’s website [www.northernbeaches.nsw.gov.au](http://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 the proposed tenancies as detailed on the approved plans for any land use of the tenancy beyond the relevant definition, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011, as follows:

- o **Restaurant 1** - *restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of—*
  - (a) *an artisan food and drink industry, or*
  - (b) *farm gate premises.*
- o **Garden Centre 3 & 4** - *garden centre means a building or place the principal purpose of which is the retail sale of plants and landscaping and gardening supplies and equipment. It may include a restaurant or cafe and the sale of any of the following—*
  - (a) *outdoor furniture and furnishings, barbecues, shading and awnings, pools, spas and associated supplies, and items associated with the construction and maintenance of outdoor areas,*
  - (b) *pets and pet supplies,*
  - (c) *fresh produce.*
- o **Rural Supplies** - *rural supplies means a building or place used for the display, sale or hire of stockfeeds, grains, seed, fertilizers, veterinary supplies and other goods or materials used in farming and primary industry production.*

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

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

**4. No Approval for any Unauthorised Signage**

No approval is granted under this Development Consent for any unauthorised signs other than exempt or signs identified on the approved plan (A60-01 - Rev 3). Any unauthorised signs must be removed or obtain the relevant approval for the erection or display of any such signs.

Reason: Control of signage.

**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 Certifier 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 Certifier 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 Certifier 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 an 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 \$250,000. The Long Service Levy is calculated on 0.25% 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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or 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 sewerred areas or managed on-site in unsewerred 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 Section 7.12 Contributions Plan 2022

A monetary contribution of \$97,295.00 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 (as amended).

The monetary contribution is based on a development cost of \$9,729,500.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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 \$10,000 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 Certifier prior to the issue of the Construction Certificate.

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

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

## BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

### 9. Amended Landscape Plan

An amended Landscape Plan shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

- a) a landscape buffer along the north-eastern boundary for the full extent of the cultivation area i.e. from the north-western boundary junction to at least 3 metres beyond the last cultivation bed to the south-east. The buffer shall be a minimum width of 3 metres as measured perpendicular to the north-eastern boundary and include a range of low lying shrubs, medium high shrubs and screen planting,
- b) coordinate the plans with the planting schedule to capture all proposed species.

Certification shall be provided to the Certifier that these amendments have been documented.

Reason: Landscape amenity.

### 10. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Henry & Hymas, drawing number 21F99\_DA\_C000 Rev 03, Dated 19/12/2023, C100 Rev 10, C101 Rev 15, C102 Rev 13 Dated 22/04/2024 and C200 Rev 04, C202 Rev 03 Dated 27/03/2024 and C201 Rev 11 Dated 30/04/24.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. Scour protection details between overflow weir of OSD basin and southern boundary.
2. Openings in southern boundary fencing to permit flows from overflow weir from OSD basin..
3. Pool style fencing around perimeter of OSD basin.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier 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.

11. **Erosion and Sediment Control Plan**

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

- o Site Boundaries and contours
- o Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- o Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- o Existing and proposed drainage patterns with stormwater discharge points
- o Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- o North point and scale.

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

Reason: Protection of the receiving environment.

12. **Detailed Design of Stormwater Treatment Measures - Major**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the Henry and Hymas Civil Engineering plans 21F99\_DA\_C202, 21F99\_DA\_C201, 21F99\_DA\_C101, 21F99\_DA\_C101 rev 15 22.04.2024 and Council's Water Management for Development Policy.

The certificate shall be submitted to the Certifier prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

13. **Car Parking Standards**

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of a construction certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

14. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by a TfNSW accredited person and

submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Specify that, due to the proximity of the site adjacent to Terrey Hills Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic on Myoora Road are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays)
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments

- such as patching at no cost to Council
- o The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- o Proposed protection for Council and adjoining properties
- o The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

**15. Building Code of Australia Fire Safety Requirements**

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Assessment Report prepared by Steve Watson and Partners, dated 29/5/2023, Report No. 2021/1055, R3.0, including any required Performance Reviews, are to be considered as part of the assessment for any Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

**16. Access and Facilities for Persons with Disabilities**

Access and facilities to and within the building are to be provided as required for Persons with a Disability in accordance with the Building Code of Australia and AS1428. In particular the DA Access Review prepared by MGAC dated 26/5/2023 is to be taken into consideration as part of the Construction Certificate assessment. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

**17. Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council’s road reserve. The Owner’s approval is to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

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

18. **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.

19. **External Finishes to Roof**

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.46 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a metallic steel or reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

Details demonstrating compliance are to be submitted to the Certifier 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.

20. **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 Certifier demonstrating the works are in compliance with Sydney Water requirements.

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

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

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

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

21. **Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifier prior to the issue of any Construction Certificate.

If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

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

22. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

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

i) works and tree protection measures under section 4 Arboricultural Method Statement, Appendix 7, and Appendix 8.

b) 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 Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

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.

23. **Tree Removal Within the Property**

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

a) tree 1 - *Acer palmatum*, trees 2 and 3 - *Nyssa sylvatica*, tree 5 - *Syzygium* sp., tree 10 *Betula pendula*, tree 12 - *Magnolia* sp., trees 14 and 15 - *Nyssa sylvatica*, tree 18 - *Hymenosporum flavum*, tree 20 - *Elaeocarpus reticulatus*, and trees 33, 34, and 35 - *Syzygium* sp.,

b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

24. **Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

25. **Road Occupancy Licence**

Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from Transport Management Centre for any works that may impact on traffic flows on Mona Vale Road.

Reason: Requirement of TMC for any works that impact on traffic flow.

26. **Demolition Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- o Make provision for all construction materials to be stored on site, at all times.
- o The DTMP is to be adhered to at all times during the project.
- o Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- o Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- o Specify that, due to the proximity of the site adjacent to Terry Hills Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic on Myoora Road are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- o Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- o Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- o Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- o Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- o Specify spoil management process and facilities to be used on site.
- o Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS' Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the Demolition



Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

**27. Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of structures within 5.0 metres of proposed excavation and earthworks associated with the property listed below.

Property: 48 Myoora Road, Terry Hills (Part Lot 128 DP 752017)

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier 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 Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

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 rising from the works.

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

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

**DURING BUILDING WORK**

**28. Tree and Vegetation Protection**

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

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
- 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 AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 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 AS4373-2007 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 Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

**29. Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

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

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

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

Reason: Protection of trees.

30. **Wildlife Protection**

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

Reason: To protect native wildlife.

31. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

32. **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.

33. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared prior to commencement of any other works on site.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

34. **Implementation of Demolition Traffic Management Plan**

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

35. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at

all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

36. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

37. **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.

38. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

39. **Site filling - Virgin Excavated Natural Material (VENM)**

Where site fill material is necessary, fill materials must:

1. Be Virgin Excavated Natural Material (VENM) only, as defined in The Protection of the Environment Operations Act 1997.

2. Be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.

The Applicant shall provide certification by a N.A.T.A. approved laboratory to the Principal Certifier for approval prior to importation of material.

Reason: To ensure protection of the natural environment.

40. **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 Certifier.

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

41. **Requirement to Notify about New Contamination Evidence**

Any new information revealed during demolition works or excavation that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifier.

Reason: To protect human health and the environment.

**BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

42. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of a part Occupation Certificate or Occupation Certificate. Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Parts 10, 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

43. **Hazardous Building Materials Survey**

A hazardous building materials survey is to be conducted by a suitably qualified and experienced person. The survey is to include a survey of hazardous building materials related to structures to be modified or demolished as part of this consent including but not limited to asbestos, lead, SMF and PCBs. Following the survey where hazardous materials or found, a Hazardous Building Materials Register is to be prepared for the premises providing recommendations for the safe management/removal of hazardous building material.

Reason: Protection of the environment, SEPP (Resilience and Hazards) 2021 compliance.

44. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved amended

Landscape Plan(s), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s) including the required amendments,
- d) mass planting shall be installed in garden beds prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- e) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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

Reason: Environmental amenity.

**45. Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, 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 and vegetation protection.

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

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

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

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

**47. Certification for the Installation of Stormwater Treatment Measures**

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with approved construction certificate plan. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

Rainwater tank to be a minimum of 8KL.

The certificate shall be submitted to the Principal Certifier prior to the release of an Occupation Certificate.

Reason: Protection of the receiving environment.

48. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. 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 is to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

49. **Stormwater Treatment Measures Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:
  - a) Work as executed drawings
  - b) Intent of the stormwater treatment measures including modelled pollutant removal rates
  - c) Site detail showing catchment for each device
  - d) Vegetation species list associated with each type of vegetated stormwater treatment measure
  - e) Impervious area restrictions to maintain the water balance for the site
  - f) Funding arrangements for the maintenance of all stormwater treatment measures
  - g) Identification of maintenance and management responsibilities
  - h) Maintenance and emergency contact information

2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:

- a) Activity description, and duration and frequency of visits

Additionally for vegetated devices:

- b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
- c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure

3. Maintenance schedule and procedure - ongoing

- a) Activity description, and duration and frequency of visits
- b) Routine maintenance requirements
- c) Work Health and Safety requirements
- d) Waste management and disposal
- e) Traffic control (if required)
- f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
- g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

50. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

51. **Signage and Linemarking - Internal**

A plan demonstrating:

1. appropriate signposting and linemarking of the entry and exit driveways to/from Mona Vale Road
2. Signposting of a No Parking restriction applying 6pm to 7pm Everyday throughout the 15 bay 90 degree parking areas denoted Zones 13 & 15 on Plan A100-20 DA-6 shall be submitted to Council's Traffic Engineer for endorsement with Council's approval provided to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: to prevent conflict between inbound and outbound traffic movements on the sites



Mona Vale Road frontage and ensure adequate space for trucks to turn on site.

**52. Loading and Service Vehicle Management Plan**

A Loading and Service Vehicle Management Plan shall be prepared by the applicant and submitted to Council's Traffic Engineer for review with an approval provided to the Principal Certifier prior to the issue of any Occupation Certificate.

The Plan will need to demonstrate how truck movements will be managed to ensure that ONLY deliveries/servicing by vehicles less than 8.8m in length will occur between the hours of 6am and 10pm with no truck movements by vehicles larger than 14.8m semi-trailers to occur at any time. The Plan to detail how the site will be managed to ensure that there will be no more than five small or medium rigid vehicles entering and exiting the site at any one time between the hours of 7am and 6pm and how safe servicing arrangements including waste collection will be undertaken without interrupting general traffic. Vehicle queuing on public road(s) is not permitted.

Reason: to ensure that truck movements are managed appropriately to minimise congestion and maximise safety for customers of the site.

**53. Disabled Parking Spaces**

Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

**54. Shared Zone Bollard**

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

**55. 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:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- 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 Certifier prior to the issue of an Occupation Certificate.

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

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

The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall 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 in red on a copy of the approved drainage plan by registered surveyor), and Civil Engineers' certification.

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 disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment 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 is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

57. **Sanitary Facilities prior to Occupation Certificate (OC) or Part Occupation**

Sanitary Facilities, prior to issue of an Occupation Certificate (OC) or Part Occupation shall comply with BCA for any operating business.

Reason: To ensure adequate sanitary facilities for any operating business.

58. **Plan of Management**

Prior to the issue of an Occupation Certificate, a Plan of Management is to be submitted to Council (Environmental Health) for approval .

Such plan shall include:

- A. Measures necessary to comply with the operational measures stated in the Acoustic Assessment by Stantec (Australia) Pty Ltd (rev 004 dated 1.6.2023)
- B. Measures to be taken in dealing with noisy patrons (particularly in the external areas) or vehicles on or leaving site at night time.
- C. Sound levels from and music or any amplification being set by Stantec (Australia) Pty Ltd and managed by staff.
- D. Actions to be taken should there be a blockage or failure (including power) of the macerator/pump to sewer system to ensure that any discharge of effluent does not occur on site or to any adjoining premises or public place. Such action/plan shall include an alarm system on site and if a significant fault, how operations will temporarily cease until resolved.
- E. A register of complaints and actions (if necessary) taken by Management being maintained on site.

Reason: To ensure that wastewater is disposed of in a manner that is not harmful to the environment.

59. **Acoustic Requirements before issue of (OC) Occupation Certificate**

Certification of compliance with the assumptions, findings and recommendations Acoustic Assessment by Stantec (Australia) Pty Ltd (rev 004 dated 1.6.2023). The Plan of Management

is to incorporate measures to ensure noise nuisances are prevented.

Reason: To ensure acoustic measures are incorporated into the development.

60. **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 Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure bushland management.

61. **Garbage and Recycling Facilities**

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

62. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier 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.

63. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided.

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

64. **Acoustic Requirements - On-going**

Compliance with the recommendations within the Acoustic Assessment by Stantec (Australia) Pty Ltd (rev 004 dated 1.6.2023) and any additional requirements at OC review stage.

Reason: To prevent a noise nuisance to any neighbouring receiver.

65. **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 amended Landscape Plan(s) and any conditions of consent.

The approved landscaped area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

66. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

67. **Implementation of Loading & Service Vehicle Management Plan**

All loading and service vehicle ingress and/or egress activities are to be undertaken in accordance with the approved Loading and Service Vehicle Management Plan. Vehicle queuing on public road(s) is not permitted.

Reason: To allow for vehicular access.

68. **Plan of Management**

The approved Plan of Management is to be complied with on-going and updated as needed.

Reason: To ensure guidance for Staff and Management and to eliminate potential nuisances

69. **Hours of Operation**

The hours of operation of 'Restaurant 1' are to be restricted to:

- o Sunday to Wednesday - 7am - 10pm
- o Thursday to Saturday - 7am – 12am
- o Public Holidays - 7am - 10pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

70. **Commercial Waste Collection**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

71. **Loading And Service Vehicle Access**

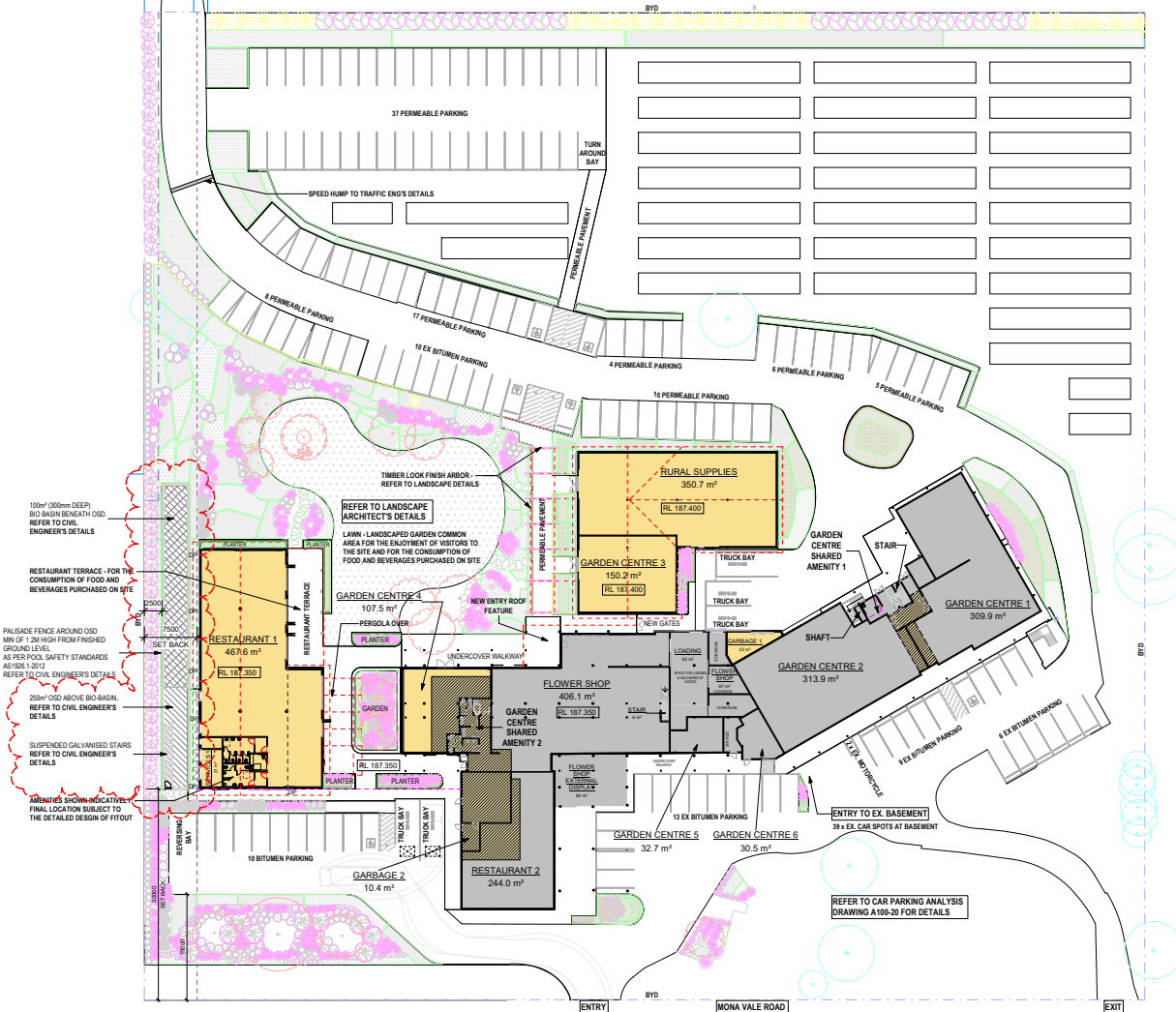
1. That trucks accessing the development site be limited to vehicles up to 8.8m in length between the hours of 6am and 10pm.

2. Trucks in excess of 8.8m in length but of no more than 14.8m in length are only permitted to access the site to/from Myoora Road and only between the hours of 10pm and 6am

Reason: to minimise conflict between trucks and passenger vehicles/pedestrians

**DEVELOPMENT APPLICATION**

All dimensions to be checked on site, written dimensions only to be used. Do not scale from drawings. Copyright of the design shown herein is retained by the Architect. Written authority is required for any reproduction.



**LEGEND**

- PROPOSED NEW WORKS / EXTENSIONS
- PROPOSED NEW INTERNAL WORKS / ALTERATIONS
- EXISTING BUILDING

**CAR PARKING**

MOTORCYCLE	3
STANDARD PARKING	168
DISABLED PARKING	6
TRUCK PARKING	5
<b>TOTAL</b>	<b>182</b>

100m² (300mm DEEP) BIO-BASIN BENEATH OSD. REFER TO CIVIL ENGINEER'S DETAILS

RESTAURANT TERRACE - FOR THE CONSUMPTION OF FOOD AND BEVERAGES PURCHASED ON SITE

PALESADE FENCE AROUND OSD MIN OF 1.2M HIGH FROM FINISHED GROUND LEVEL AS PER POOL SAFETY STANDARDS AS1926.1:2012 REFER TO CIVIL ENGINEER'S DETAILS

200m² OSD ABOVE BIO-BASIN. REFER TO CIVIL ENGINEER'S DETAILS

SUSPENDED GALVANISED STEPS REFER TO CIVIL ENGINEER'S DETAILS

ADRENIES SHOWN INDICATIVE FINAL LOCATION SUBJECT TO THE DETAILED DESIGN OF FITOUT

1 PROPOSED GROUND LEVEL - OVERALL SITE  
1:300



**HILLS MARKET PLACE**  
287 MONA VALE ROAD, TERREY HILLS, NSW 2084

ISSUE	DATE	DESCRIPTION
7	09.06.23	ISSUED FOR D.A
8	16.11.23	RFI RESPONSE
9	22.04.24	RFI RESPONSE

**PROPOSED OVERALL SITE PLAN**

A02-01 DA - 9

1:300 @ A1  
1:600 @ A3



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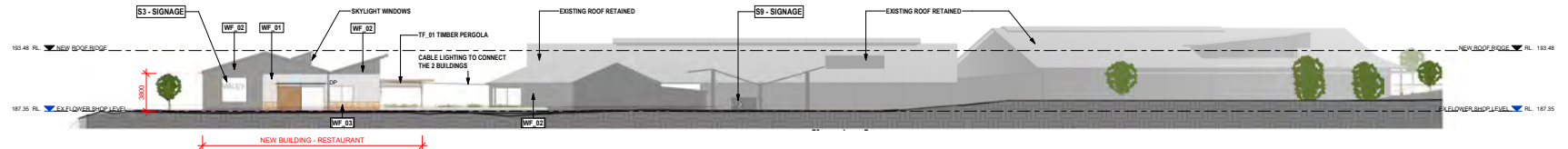
**DEVELOPMENT APPLICATION**

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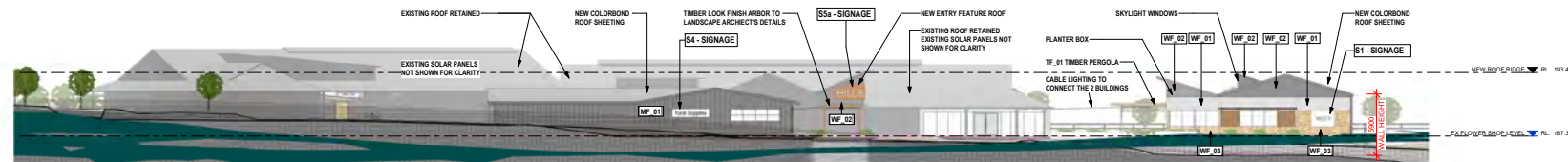
**WALL FINISHES LEGEND**

REFER ALSO TO MATERIAL SAMPLE BOARD - DRAWING A70.01

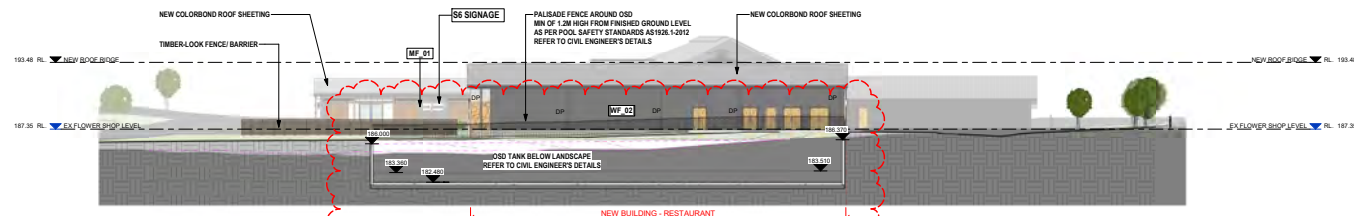
-  WF 01 VERTICAL METAL CLADDING
-  WF 02 HORIZONTAL WEATHERBOARD CLADDING
-  WF 03 VERTICAL WEATHERBOARD CLADDING
-  WF 04 STONE CLADDING
-  WF 05 TIMBER



1 PROPOSED ELEVATION 1  
1:200



2 PROPOSED ELEVATION 2  
1:200



3 PROPOSED ELEVATION 3  
1:200



**HILLS MARKET PLACE**  
287 MONA VALE ROAD, TERREY HILLS, NSW 2084

ISSUE	DATE	DESCRIPTION
4	24.05.23	ISSUED FOR D.A
5	16.11.23	RFI RESPONSE
6	22.04.24	RFI RESPONSE

**PROPOSED EXTERNAL ELEVATIONS**

A09-01 DA - 6  
1:200 @ A1  
1:400 @ A3

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NSW Registered Architect No. 8435



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**ITEM 3.5 DA2023/1841 - 77 BASSETT STREET MONA VALE - USE OF PREMISES AS A HARDWARE AND BUILDING SUPPLIES FACILITY AND ASSOCIATED INTERNAL ALTERATIONS**

**PURPOSE**

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

**RECOMMENDATION**

THAT Council as the consent authority **refuses** Development Consent to DA2023/1841 for use of premises as a hardware and building supplies facility and associated internal alterations on land at Lot 1 DP 88028 & Lot 4 DP 707291, 77 Bassett Street MONA VALE, for the reasons for refusal set out in the Assessment Report.

<b>Reporting manager</b>	Steve Findlay
<b>TRIM file ref</b>	2024/341778
<b>Attachments</b>	<a href="#">↓1 Assessment Report</a> <a href="#">↓2 Site Plan and Elevations</a>



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1841
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<b>Responsible Officer:</b>	Simon Ferguson Tuor
<b>Land to be developed (Address):</b>	Lot 1 DP 88028, 77 Bassett Street MONA VALE NSW 2103 Lot 4 DP 707291, 77 Bassett Street MONA VALE NSW 2103
<b>Proposed Development:</b>	Use of Premises as a hardware and building supplies facility and associated internal alterations
<b>Zoning:</b>	E4 General Industrial
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Matthew Vaughan Davison Harrington Mona Vale Pty Ltd Trevor Byles
<b>Applicant:</b>	JJ Drafting Australia Pty Ltd

<b>Application Lodged:</b>	19/12/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	09/01/2024 to 25/01/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	9
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 150,000.00
---------------------------------	---------------

### EXECUTIVE SUMMARY

This development application seeks consent for the use of the premises as a *hardware and building supplies facility* and involves associated internal alterations.

The proposal represents a significant intensification in the use of the existing warehouse and office Units 1 and 2, and correspondingly involves an increase in the off-street parking requirements for the units based on the change of use to a higher intensity type of occupation under the Pittwater 21

Development Control Plan.

The application is referred to the Development Determination Panel (DDP) due to 5 or more unique submissions being received in response to the notification.

Concerns raised in the objections predominantly relate to traffic, parking, noise and safety.

Council's Traffic Engineering Team reviewed the proposal on multiple occasions, with the applicant submitting successive items of additional information in an attempt to satisfy the concerns in relation to inadequate off-street parking for the occupation/change of use. Unfortunately, the applicant was not able to satisfactorily resolve the concerns. The reliance upon parking spaces which belong to other uses within the warehouse complex is inappropriate in the circumstances. Therefore, at the end of a lengthy assessment process, the proposal is unsupportable by the traffic team, which is concurred with by the planning assessment.

Critical assessment issues included inconsistency with s4.15 (1)(b) - Environmental Social and Economic Impacts, s4.15 (1)(c) - Suitability of the Site and s4.15 (1)(e) - Public Interest, of the Environmental Planning and Assessment Act 1979, Clause A1.7 Considerations before consent is granted and Clause B6.3 Off-Street Vehicle Parking Requirements of the of Pittwater 21 Development Control Plan.

This report concludes with a recommendation that the DDP should refuse the development application for the reasons stated at the end of this report.

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

The proposal seeks consent for the fit out and use of an existing warehouse/office premises (Units 1 and 1) as a *hardware and building supplies facility*.

The proposal also seeks consent for the following operating hours:

- Monday to Friday: 7.00am-5.30pm
- Saturday: 8.00am-5.00pm
- Sunday: 9.30am-3.00pm

The proposal will have a maximum of five (5) staff on site at any given time.

The proposal does not involve any increase in the floorspace of the building.

Unit 1 and 2 were previously used as a showroom and warehouse. Hence, the proposal involves an intensification of the use and has additional off street parking requirements under the P21DCP.

In this regard, the proposal includes 22 car parking spaces, with an arrangement whereby 18 of these spaces are allocated to Units 1 and 2, and four (4) spaces are proposed to be sourced from parking associated with the adjoining Unit 3.

#### **Amended Plans**

Following the preliminary assessment of the application, Council requested additional information in relation to off-street vehicle parking requirements and details on the proposed operations.

Amended plans and documentation were subsequently submitted which attempted to address Council's concerns.

The amended plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (NBCPP).

**ASSESSMENT INTRODUCTION**

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

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

**SUMMARY OF ASSESSMENT ISSUES**

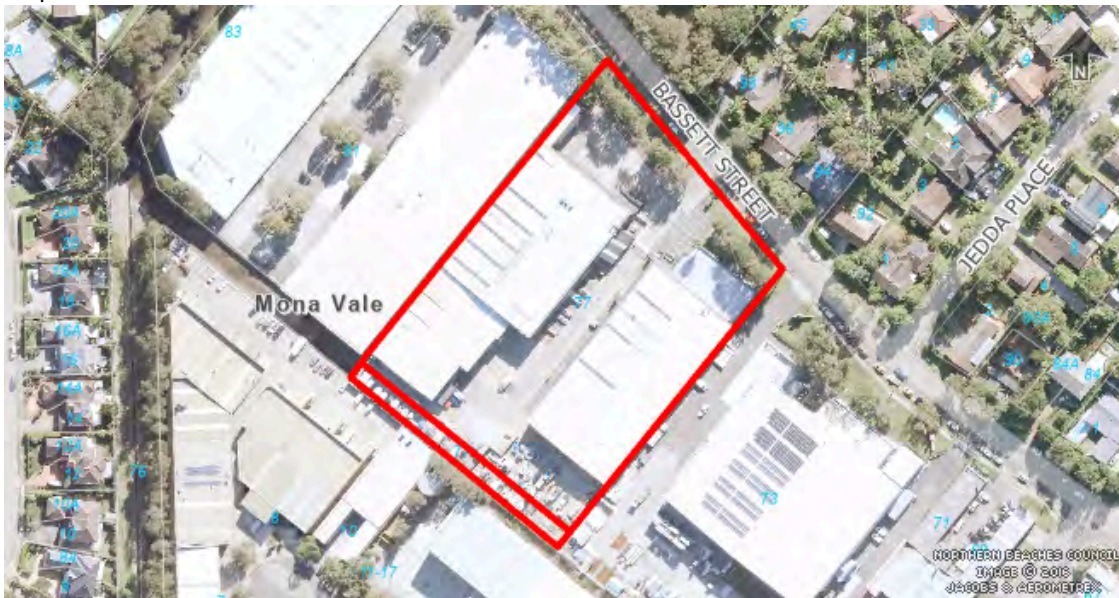
Pittwater 21 Development Control Plan - A1.7 Considerations before consent is granted  
 Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot 1 DP 88028 , 77 Bassett Street MONA VALE NSW 2103 Lot 4 DP 707291 , 77 Bassett Street MONA VALE NSW 2103
<b>Detailed Site Description:</b>	<p>The subject site consists of two(2) units within set of two industrial allotments, located on the southern side of Bassett Street. Specifically, it involves Unit 1 and Unit 2 located in the south eastern portion of the industrial estate.</p> <p>The site is regular in shape with an approximated frontage of 102.745m along Bassett Street and a depth of 153.48m. The site has a surveyed area of 14470m<sup>2</sup>.</p> <p>The site is located within the E4 General Industrial (formerly IN2 Light Industrial zone and accommodates two large buildings, separated by a central driveway.</p>

	<p>The site is flat.</p> <p>The site is highly developed and contains little vegetation.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by neighbouring industrial sites to the east, west and south, along Bassett Street. Development to the north consists of dwelling houses zoned R2 Low Density Residential.</p>
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Map:



**SITE HISTORY**

A search of Council's records has revealed that there are no recent or relevant applications for this site. Other applications located on the site relate to different units within the allotment.

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

**Application History**

A Request for Information letter (RFI) was sent to the applicant on 28 February 2024 in relation to concerns raised by Council's Environmental Health (Industrial) and Traffic Engineering teams.

Amended plans and documentation was received via the NSW Planning Portal on 26 March which resolved the concerns raised by Environmental Health (Industrial). However, the amended plans and updated traffic report did not resolved Traffic Engineering's concerns.

Whilst the RFI makes it clear that one chance will be permitted to address and rectify issues raised in the RFI, the applicant was afforded another chance to respond to the remaining issues Traffic Engineering had raised, namely non-compliance with *Pittwater DCP B6.3 Off-Street Vehicle Parking Requirements*.

The assessing officer received an email from an objector on 22 April 2024 advising that site fencing had been erected and building work commenced. The assessing officer forwarded the complaint to Council's Building Compliance team.

The applicant was advised to submit any final amendments and the application would thereafter be determined on its merits.

The applicant uploaded final amended plans and additional documentation on 7 May 2024. The final amended proposal sought to provide 22 car parking spaces by utilizing 4 spaces from the adjoining Unit 3. However, there were numerous ambiguities as to the shortfall in car parking spaces at Unit 3, where such parking spaces would be replaced and whether or not this would be subject to a Development Application at a later stage. Council's Traffic Engineering team were still not supportive of the proposal.

It is considered that sufficient time and opportunities have been provided for the requested information.

The applicant was informed that the application would proceed to determination by the DDP.

Further amended plans were uploaded to the NSW Planning Portal on 22 February 2024.

These plans were not solicited, are not considered to be an application for an amendment to the application as permitted via section 37 of the Environmental Planning and Assessment Regulation 2021.

The assessing officer emailed Council's Traffic Engineer the final plans and was informed that even if re-referred formally, they would not be supported.

Therefore, the proposal proceeds in its current form with a recommendation of refusal.

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

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

<b>Section 4.15 Matters for Consideration</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration	Comments
<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&amp;A Regulation 2021)</p>	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 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 29</u> of the EP&amp;A Regulation 2021 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 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to car parking spaces and noise.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has could have been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter could have been been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 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>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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered unsuitable for the proposed intensification in the use of warehouse/office Units 1 and 2 to a higer intensity retail type use, and the reliance upon parking associated with the adjoining Unit 3 is inappropriate.</p>

Section 4.15 Matters for Consideration	Comments
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.  In summary, the parking concerns raised by the objectors are concurred with.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant planning and parking provisions of the Pittwater 21 Development Control Plan and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community.  In this regard, the development, as proposed, is not considered to be in the public interest.

**EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

**BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

**NOTIFICATION & SUBMISSIONS RECEIVED**

The subject application has been publicly exhibited from 09/01/2024 to 25/01/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 9 submission/s from:

Name:	Address:
Lana Ann Casey	9 Jedda Place MONA VALE NSW 2103
Mr Jens Frei	96 Bassett Street MONA VALE NSW 2103
Mr Neil James McAully	13 Paul Close MONA VALE NSW 2103
Mr Matthew Sean Pitcher	64 Bassett Street MONA VALE NSW 2103
Mr Mario Francisco Benitez	94 Bassett Street MONA VALE NSW 2103
Mrs Beverley Anne French	15 Jedda Place MONA VALE NSW 2103
Mrs Skye Collette Rose	7 Jedda Place MONA VALE NSW 2103
Mr Robert Gora	5 Jedda Place MONA VALE NSW 2103
Mr Stephen John Pye	13 Jedda Place MONA VALE NSW 2103

The following issues were raised in the submissions:

- *Increased traffic generation*
- *Noise*
- *Safety*
- *Lack of resident parking*
- *Cumulative impacts*

The above issues are addressed as follows:

- **Increased traffic generation**

The submissions raised concerns that the intensification of the site would result in additional customers, staff and deliveries, thus placing more stress on the local road network.

Comment:

The application was referred to Council's Traffic Engineering team, who did not raise traffic generation as an issue.

- **Noise**

The submissions raised concerns that noise associated with deliveries, trucks and the hours of operation would create unreasonable impacts on neighborhood amenity.

Comment:

Council's Environmental Health (Industrial) team requested further information in relation to operating details of the proposal, times and frequencies of deliveries and whether there would be noise generating activities on site. The applicant provided further information which resolved the concerns raised by Environmental Health (Industrial) and were supportive of the proposal.

- **Safety**

The submissions raised concerns that additional trucks, deliveries, staff and customers would create further issues in relation to pedestrian safety and safety of residents when entering and exiting their own properties.

Comment:

The application was referred to Council's Traffic Engineering team, who did not raise safety as a specific issue. The application was submitted with a Traffic Report and vehicular swept paths demonstrating compliance with controls and standards in relation to truck turning paths.

Council's Traffic Engineering team were not supportive of the proposal in relation to its non-compliance with off-street parking rates. Non-compliance with off-street parking requirements would indirectly place further stress onto the congested street parking and be a safety issue. The proposal is recommended for refusal, taking into consideration safety concerns.

- **Lack of resident parking**

The submissions raised concerns that the proposal would result in less street parking.



Comment:

As above, the proposal is recommended for refusal based on insufficient parking being demonstrated.

- **Cumulative impacts**

The submissions raised concerns that the cumulative impacts of the proposal would not be in the public interest.

Comment:

The proposal was assessed on merit against the relevant controls. Many of the issues raised in the submissions were addressed more towards the existing traffic and parking issues on Bassett street, rather than to the subject application. However, given the amount of objections, a thorough assessment has been undertaken which ensured strict compliance with the planning controls and gave consideration to the cumulative impacts of the proposal in the context of the other approved land uses nearby. Given the proposal's non-compliance with off street parking requirements, it is recommended for refusal and deemed to not be in the public interest.

**REFERRALS**

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported with conditions</b></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><i>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.</i></p>
Environmental Health (Industrial)	<p><b>Supported with conditions</b></p> <p>This application is seeking consent for the fit out and use of an existing premises for hardware and building supplies at units 1 and 2, 77-79 Bassett Street, Mona Vale.</p> <p>The premises is zoned General Industrial.</p> <p>The Statement of Environmental Effects state:</p>

Internal Referral Body	Comments
	<p>This application will seek to formalise the land use as a hardware and building supplies facility, which will operate as an adjunct of the Johnson Bros Mitre 10 hardware and building supplies operation at the adjoining premises at 75 Bassett Street. The works will involve only minor internal alterations and additions to the existing light industrial / commercial premises.</p> <p>The proposal seeks consent for the following operating hours:</p> <ul style="list-style-type: none"> <li>• Monday to Friday: 7.00am-5.30pm</li> <li>• Saturday 8.00am-5.00pm</li> <li>• Sunday – 9.30am – 3.00pm.</li> </ul> <p>The proposal will also have a maximum of five staff on site at any given time.</p> <p>The nearest residential receiver is approximately 30m away from Unit 1. The operating hours do not seem unreasonable for an Industrial zone however details on the exact proposed operations are vague and Environmental Health requests further information before finalising this assessment.</p> <p>Can the applicant please provide details on the following:</p> <ol style="list-style-type: none"> <li>1. <i>Times and frequency of deliveries for the business. Details on the types of deliveries.</i></li> <li>2. <i>Details on the proposed operations within Unit 1 and 2. What is proposed to be involved in a hardware and building supplies facility? Will the premises be supplying items to customers resulting in deliveries throughout the day from the premises? Is it intended that customers can visit the premises to collect items?</i></li> <li>3. <i>Will there be any noise generating activities onsite involving power tools associated with the operation of the business?</i></li> </ol> <p>UPDATED REFERRAL COMMENTS</p> <p>Information has been provided to address the above questions and Environmental Health recommends approval subject to conditions.</p>
Landscape Officer	<p><b>Supported with conditions</b></p> <p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral staff have assessed the proposal against Pittwater Local Environment Plan zone E4 General Industrial and the relevant Pittwater 21 DCP controls, including Mona Vale</p>

Internal Referral Body	Comments
	<p>Locality.</p> <p>The proposed works are contained to the existing warehouse footprint. No concerns are raised, and all trees fronting the property must be protected during works in accordance with the requirements outlined in the conditions of consent.</p>
NECC (Development Engineering)	<p><b>Supported</b></p> <p>The proposal is for internal alterations to an existing industrial building. No objections to approval.</p>
NECC (Flooding)	<p><b>Supported</b></p> <p>The proposal is for interior alterations and additions to Unit 1 and 2 at 77 Basset Street, Mona Vale. Preparing the units for use as a hardware and building supplies outlet.</p> <p>Unit 1 &amp; 2 are within the identified Low Risk Flood Precinct. As such, they are unaffected by the 1% AEP Flood Event and flood planning area. The units are affected by the Probable Maximum Flood (PMF). With an identified PMF Level of 3.29m AHD.</p> <p>Council is satisfied that the proposal is compliant with Section B3.11 of the Pittwater 21 DCP 2021 and Clause 5.21(2)(a-e) of the Pittwater LEP 2014, with consideration of Clause 5.21(3)(a-d) of the Pittwater LEP 2014.</p>
Traffic Engineer	<p><b>Not Supported/Recommended for Refusal</b></p> <p><b>Further comments - dated 9/05/2024</b></p> <ul style="list-style-type: none"> <li>• It is noted that a response letter has been provided in response to the council's further comments regarding the newly introduced 4 parking spaces.</li> <li>• The 4 parking spaces with sign posted to be used only for units 1 &amp; 2 could be considered but, the problem lies in the deficiency of parking for unit 3 in meeting its statutory requirements of minimum 1 space per 300 square metres of GFA.</li> <li>• The response letter states to provide those lost 4 spaces in the hardstand area outside unit 3, which is used as a storage space. Given these are the new spaces and due to the hardstand area being used as storage area, the problem of lack of parking is not resolved. Moreover, a further look at the aerial images throughout different times of different years, shows that this hardstand area is heavily used by large trucks and storage containers. Hence, the current proposed location of new spaces obstruct the access of those trucks and storage containers.</li> <li>• Unless Johnson Bros maintain the lease of unit 3 forever, the proposed new 4 spaces are not in acceptable arrangement because in future, if this unit 3 is sold, the new owner or tenant</li> </ul>

Internal Referral Body	Comments
	<p>may not be happy with these new 4 spaces which are provided in the hardstand area.</p> <p><b>Conclusion</b> Given the above reasons, the proposal is not supported.</p> <p><b>Further comments - dated 3/05/2024</b></p> <ul style="list-style-type: none"> <li>• It is noted that an updated continuous swept path has been provided as requested. The swept path analysis shows an encroachment onto the disabled parking space during entry movement. The same traffic letter mentions that the disabled parking space will be vacant during loading activities which would occur between 5:30pm and 8:00pm. This is acceptable subject to conditions.</li> <li>• It is noted that the updated traffic letter provides a new calculation for required parking spaces with the parking occupancy of 16 spaces as observed by the Council's Traffic Engineer. The new calculation shows a requirement of minimum 16 spaces, and the traffic letter mentions a requirement of minimum 22 spaces including 6 staff spaces for the proposed development. Although the traffic letter claims this to be a worst-case scenario and a pessimistic approach, 4 new visitor spaces have been provided resulting in a total of 22 spaces.</li> <li>• The traffic letter states, "To address the above issue, the Client has reviewed the parking provision and managed to provide a total of 22 parking spaces (16 visitor and 6 staff spaces). A map of updated parking provision of 22 spaces can easily fulfil the parking demand of the proposed development". However, further information confirming ownership of those spaces and whether they can be viewed as being exclusively available to visitors to the Mitre 10 trade store is required. If the space are currently used by other tenancies this use needs to be outlined and the impact on the parking provisions for those developments reviewed. The traffic letter must be updated to provide further information about the newly added 4 visitor spaces. A site visit by Council staff reveals the majority of the spaces within the overall site are signposted and used by the customers and staff of other tenancies.</li> </ul> <p><b>Conclusion</b></p> <p>The application can be acceptable from a traffic perspective subject to conditions if further information regarding newly introduced 4 visitor spaces as requested above is provided to Council's satisfaction.</p> <p><b>Further comments - dated February 2024</b></p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• It is noted that the applicant's traffic consultant has provided amended plans which show motorcycle and bicycle parking spaces. These details are also reflected on page 21 of the amended architectural plans entitled Parking Plan revision F dated 24/1/2024.</li> <li>• It is noted that a set of swept paths for SRV and MRV trucks have been provided with the traffic consultants response dated 6 February 2024 in Appendix B of that document. However, a closer look on the swept paths reveal that the positions of vehicles are changed in exit swept path from the entry swept path. Hence, an updated continuous swept path must be provided to demonstrate that forwards ingress and egress is achievable by the MRV.</li> <li>• It is noted that all movements by MRVs are proposed to occur after hours i.e between 5:30pm and 8:00pm. There are no traffic engineering concerns with this arrangement which will be conditioned.</li> <li>• It is noted that in amended plans (page 8 of Traffic Responses Letter) 4 bicycle parking spaces and 1 motorcycle parking space are provided in accordance with the requirements of the Pittwater DCP. This is acceptable subject to conditions.</li> <li>• The Traffic Consultants response to the traffic engineers referral claims that Council has only considered data presented in the RMS guidelines, and has given no weight to the data presented by the applicant relating to the Total Tools trade store at Brookvale. Hence, Council's Traffic Engineer has undertaken their own assessment of the parking situation at that site on Friday 9<sup>th</sup> February 2024 at 2pm. During the site visit, it was observed that there was a total of 27 car parking spaces on-site with accesses from Pittwater Road and Roger Street. The occupancy rate was found to be 59% with a total of 16 cars parked. Moreover, it was also observed that the upper level tenancy at that address was vacant, resulting in all the car parking spaces on the site being available for use by Total Tools. The current parking circumstances at Total Tools where a greater number of spaces are currently available than would be the case if the upstairs tenancy where occupied is considered unrepresentative. Council believes that a more representative data set is available by referencing an average rate from RMS verified surveys done at a range of different locations as presented on Roads and Maritime Services Guide to Traffic Generating Developments. Comments made in the original referral comments regarding the inadequate level of parking remain largely unaddressed</li> <li>• It is noted that page 22 of the Amended Master Set now shows two additional parking spaces along the western boundary of the bigger site which was missing on the originally submitted Master Set. One of those spaces is denoted pallet parking which cannot be counted as car parking.</li> <li>• It is noted that the provided Traffic Responses Letter has now provided a comparison of traffic generation from the existing</li> </ul>

Internal Referral Body	Comments
	<p>development when compared with proposed future traffic generation. the anticipated change in traffic generation is minor and should not impact negatively on surrounding road network performance.</p> <p>Given the concerns that remain unaddressed by the revised plans and traffic reporting the development remains unsupported by the traffic team</p> <p><b>Original comments - dated January 2024</b>  <b>Proposal description:</b> Alterations &amp; additions for proposed change of use at Units 1 &amp; 2/ 77-79 Basett Street, Mona Vale                      The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> <li>• Plans (Master Set) – Job No. 1182/23, Revision E, designed by JJ Drafting, dated 31/10/2023,</li> <li>• Transport Impact Assessment, prepared by Traffic and Transport Planning Solutions (TTPS), dated 12/12/2023,</li> <li>• The <i>Statement of Environmental Effects</i> prepared by Vaughan Miligan Development Consulting Pty Ltd, dated December 2023</li> </ul> <p><b>Parking requirement and design:</b></p> <ul style="list-style-type: none"> <li>• The Pittwater DCP applies to the subject site. The DCP does not provide a parking rate for this type of land use, requiring developers to provide parking based upon RMS guidelines or by comparison with developments of a similar nature</li> <li>• The traffic report suggests the car parking is provided that exceeds rates calculated from parking surveys of similar sites conducted for TfNSW as referenced in their technical direction TDT 2013/04a. A closer review of this data suggest that the quantum of parking available to this development will be inadequate. The development proposes only 11 customer spaces. Sites surveys by TfNSW included a number of sites of a similar size to his one and averaging the data from those sites would seem the most appropriate means of selecting an appropriate level of parking.</li> <li>• Mitre 10 Windsor with GFA of 1800m<sup>2</sup> has 44 customer spaces &amp; no staff spaces, Mitre 10 Picton has a GFA of 1600m<sup>2</sup> and has 75 customer and no staff spaces, Mitre 10 Orange has a GFA of 1800m<sup>2</sup> and 28 staff spaces, 2 disabled and 10 staff spaces. Mitre 10 Morisset has a GFA of 2000m<sup>2</sup>, 29 customer spaces, 1 disabled and no staff spaces. Averaging these parking rates yields a parking requirement of 1 space per 38m<sup>2</sup> of GFA i.e 33 spaces for this site.</li> <li>• If we look at the peak parking demands of the 4 sites, parking demands range from 0.78/100m<sup>2</sup> for the Mitre 10 at Windsor on weekdays up to 2.81/100m<sup>2</sup> for the Mitre 10 at Picton weekends. As this type of use attracts highest usage levels on</li> </ul>

Internal Referral Body	Comments
	<p>weekends, parking rates derived from weekend data are the most relevant. An average of the weekend peak parking demands at all 4 sites reveals a peak parking demand of 1.86spaces/100m<sup>2</sup> or 23 spaces for this site. Based upon this analysis the development should be providing parking for no less than 23 cars. The bulk of this parking should be allocated for customer parking with it noted that clause c5.5 of the Pittwater DCP requires that carparking be provided for people with disabilities so at least one parking spaces should be designed and located appropriately for disabled use. The developer must review their proposal and seek additional parking for customers, to support their development. The additional parking should be buried in a tandem arrangement.</p> <ul style="list-style-type: none"> <li>• It is noted that the traffic report shows 2 car parking spaces along the western boundary of the bigger site (figure 4.1 on page 9). These spaces are not shown on the architectural plans. The two documents should be consistent with the location and dimensions of all parking spaces shown on the plans.</li> <li>• The traffic report mentions that a maximum of 5 staff will be present at any given time however 7 staff parking spaces are proposed. This is both unnecessary and reduces the level of parking available for customers. It is suspected that the reason that 7 spaces have been allocated for staff use is there are seven spaces buried in tandem parking arrangements. Such spaces would therefore be inappropriate for use by customers however simply reallocating those spaces for unnecessary staff parking is not acceptable. If anything, the quantum of staff parking could be reduced below 5 which would encourage staff to use public transport, walk or cycle or motorcycle to work and increase the level of customer parking .</li> <li>• No motorcycle or bicycle parking has been provided. The Pittwater DCP requires at least one motorcycle space and 4 bicycle parking spaces. These could be sited at the front end of parking spaces 77 &amp; 78 which are of extended length without impacting on the ability of vehicles to park in or access these spaces. The provision of such spaces would encourage travel by alternate means, particularly by staff.</li> </ul> <p><b>Loading/Serviceing</b></p> <ul style="list-style-type: none"> <li>• The traffic report mentions that some customer spaces will be closed off while MRVs ingress/egress the loading bay. The traffic report advises that swept paths showing this are attached in Appendix E. The traffic report is missing Appendix E containing the swept path, these should be provided. Furthermore, a Loading Dock Management Plan will be required to ensure that deliveries are appropriately scheduled and timed so as not to result in congestion either within the loading dock or in the carparking area. Ideally physical</li> </ul>

Internal Referral Body	Comments
	<p>separation of loading/unloading activity from customer areas should be achieved but if that is not feasible time of day separation will be considered to ensure that loading activities occur outside hours when customers will be accessing the site.</p> <p><b>Traffic Generation Impact</b></p> <ul style="list-style-type: none"> <li>The traffic generation section of the traffic report should show a comparison of existing and proposed traffic generation in order to support the proposed change of use in terms of traffic generation and its impact in the surrounding road network and confirm that it will not have unacceptable implications in terms of road network performance.</li> </ul> <p><b>Conclusion</b> Given the concerns outlined above the development cannot at this time be supported</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	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 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 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 (Transport and Infrastructure) 2021**



Ausgrid

Section 2.48 of Chapter 2 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 could have been included in the recommendation of this report.

**SEPP (Resilience and Hazards) 2021**

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for industrial 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the industrial land use.

**Pittwater Local Environmental Plan 2014**

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

Principal Development Standards

The proposed development involves the fit out and use of an existing premises as a hardware and building supplies facility. There are no changes to the built form that impact on any existing principle development standards. Therefore, there are no applicable principal development standards.

Compliance Assessment

Clause	Compliance with Requirements
5.21 Flood planning	Yes
7.10 Essential services	Yes

**Pittwater 21 Development Control Plan**

Built Form Controls

The proposed development involves the fit out and use of an existing premises as a hardware and building supplies facility. There are no changes proposed to the built form of the dwelling that would alter the existing built form metrics. Therefore, there are no applicable built form controls in this instance.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.9 Mona Vale Locality	Yes	Yes
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	No
B6.7 Transport and Traffic Management	Yes	Yes
B6.8 Access Driveways and Works on the Public Road Reserves on or Adjacent to a Commercial Centre Primary Road	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C3.1 Landscaping	Yes	Yes
C3.2 Safety and Security	Yes	Yes
C3.4 Accessibility	Yes	Yes
C3.6 External Storage Areas	Yes	Yes
C3.8 Building Facades	Yes	Yes
C3.10 Waste and Recycling Facilities	Yes	Yes
C3.12 Signage	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	Yes	Yes

Detailed Assessment

**A1.7 Considerations before consent is granted**

Under Clause A1.7 Considerations before consent is granted the following applies:

Before granting development consent, Council must be satisfied that the development is consistent with:

*Pittwater Local Environmental Plan 2014; and the desired character of the Locality; and the development controls applicable to the development.*

As detailed throughout the report the development is inconsistent with the following:

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

As such, it is considered the proposal is inconsistent with Clause A1.7 Considerations before consent is granted of Pittwater 21 Development Control Plan, and this will form part of the reasons for refusal.

**B6.3 Off-Street Vehicle Parking Requirements**

**Requirements**

The proposal involves the use of premises as a hardware and building supplies facility and associated internal alterations. Unit 1 and 2 were previously used as a showroom and warehouse. Hence, the proposal involves an intensification of the use and additional off street parking requirements.

There is no specific parking requirement for *hardware and building supplies* in Pittwater21 DCP. In these instances, the relevant requirement is:

*The minimum number of vehicle parking requirements must be determined using the appropriate guidelines for parking generation and servicing facilities based on development type comparison based on the Roads and Maritime Services Guide to Traffic Generating Development [RMS Guide] or analysis drawn from surveyed data for similar development uses. Provision must be made within the development site for access and parking of all service vehicles servicing the site, visitor parking and parking for people with disabilities.*

**Consideration of Proposal**

As discussed above under 'Internal Referrals', the proposal was referred to Council's Traffic Engineer on four separate occasions. Traffic Engineering are not satisfied that the proposal has demonstrated compliance with the off-street parking control and unsupportive.

Taking into consideration the 7 objections which were all related to traffic and parking, Council was not provided sufficient information and clarity in order to be satisfied that the proposal complied with the

outcomes of the control:

- *An adequate number of parking and service spaces that meets the demands generated by the development.*
- *Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.*
- *Safe and convenient parking.*

The amended proposal has not demonstrated compliance with the outcomes of the control and as such this non-compliance forms a reason for refusal.

### **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 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$ 750 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 150,000.

### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

### **PLANNING CONCLUSION**

This proposal, for use of the premises as a hardware and building supplies facility and associated internal alterations has been referred to the Development Determination Panel (DDP) due to receiving 5 or more unique submissions during the notification period.

The concerns raised in the objections have been have been assessed, and the matters raised form part of the reasons for refusal.

Issues raised by Council's Traffic Engineering team have not been adequately addressed and remain unresolved.

Critical assessment issues include; inconsistency with s4.15 (1)(b) - Environmental Social and Economic Impacts, s4.15 (1)(c) - Suitability of the Site and s4.15 (1)(e) - Public Interest of the Environmental Planning and Assessment Act 1979, Clause A1.7 - Considerations before consent is granted and Clause B6.3 Off-Street Vehicle Parking Requirements of the Pittwater 21 Development Control Plan (P21DCP).

On balance, despite the numerous opportunities given to the applicant to address the issues raised by the traffic team and through the planning assessment, the conclusion has been reached that the development is inconsistent with the relevant carparking provisions of the P21DCP, and there is inadequate carparking for the proposed use, it has the potential to cause unreasonable traffic and parking impacts on the surrounding area, particularly in relation to impacts on the amenity of the residential properties to the north in Bassett Street.

Fundamentally, the reliance upon parking spaces which belong to other uses within the warehouse complex is inappropriate in the circumstances.

Therefore, it is considered that the site is not suitable for the proposed change of use and intensification in the use of the site.

The proposal has therefore been recommended for refusal.

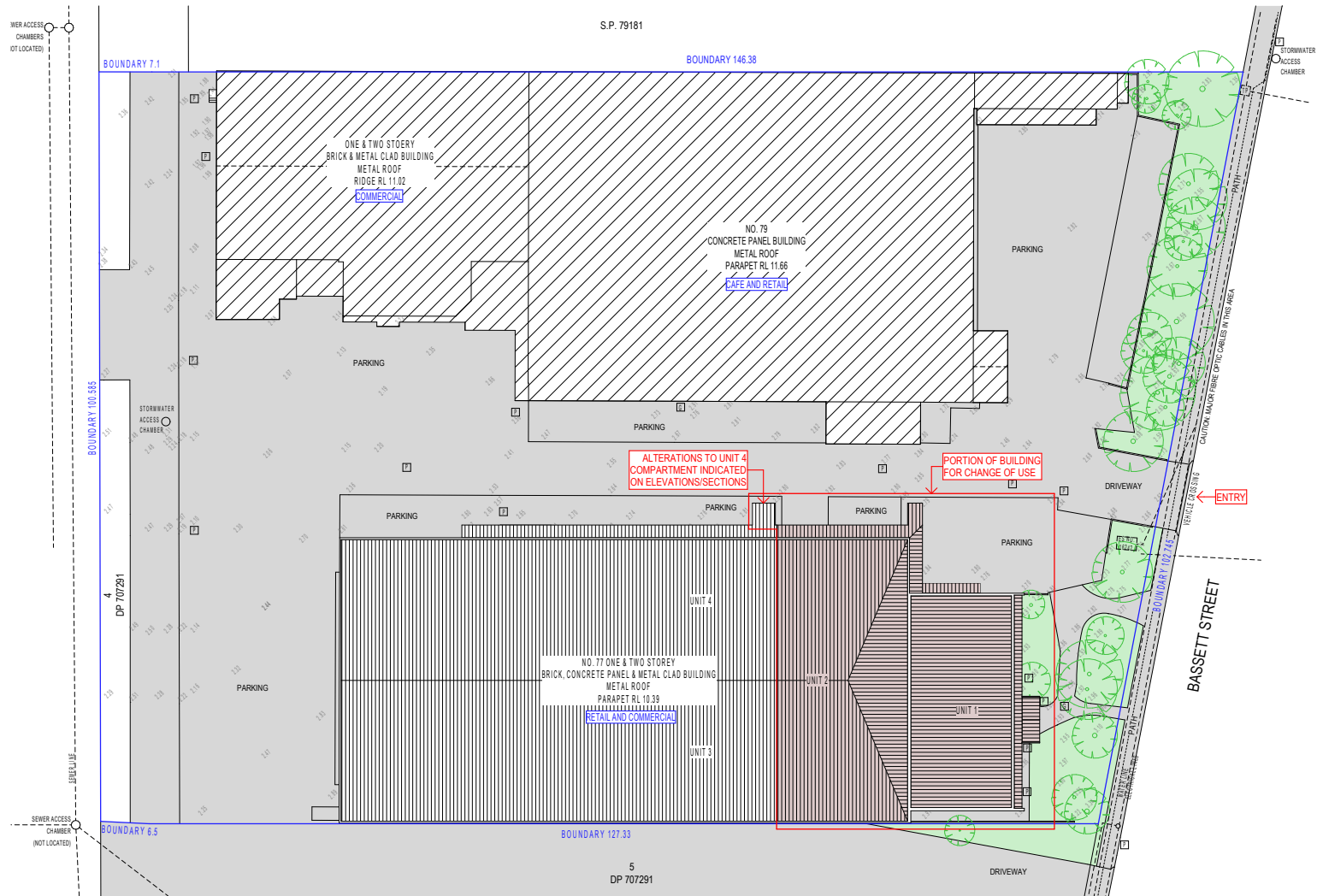
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

### **RECOMMENDATION**


THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/1841 for the Use of Premises as a hardware and building supplies facility and associated internal alterations on land at Lot 1 DP 88028,77 Bassett Street, MONA VALE, Lot 4 DP 707291,77 Bassett Street, MONA VALE, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(b)(i)(ii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the environmental impact and social impact provisions of the Environmental Planning and Assessment Act 1979.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A1.7 Considerations before consent is granted of the Pittwater 21 Development Control Plan.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B6.3 Off-Street Vehicle Parking Requirements of the Pittwater 21 Development Control Plan.
4. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 the proposed development is unsuitable for the site and therefore inconsistent with the provisions of the Environmental Planning and Assessment Act 1979.
5. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

ATTACHMENT 2 : SITE PLAN AND ELEVATIONS - ITEM 3.5 - NORTHERN BEACHES COUNCIL MEETING - 22 MAY 2024



LOT 1  
 DP 88028  
 SITE AREA = 14470 m<sup>2</sup>

TRUE NORTH: 

NOTES (E & OE)

- All structures including stormwater & drainage to engineer's details.
- Do not obtain dimensions by scaling drawings.
- All dimensions are to be checked on site prior to starting work.
- These drawings are to be read in conjunction with all other consultant's drawings and specifications.
- All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.
- New materials are to be used throughout unless otherwise noted.
- Concrete footings, slab, structural beams or any other structural members are to be designed by a practising engineer.

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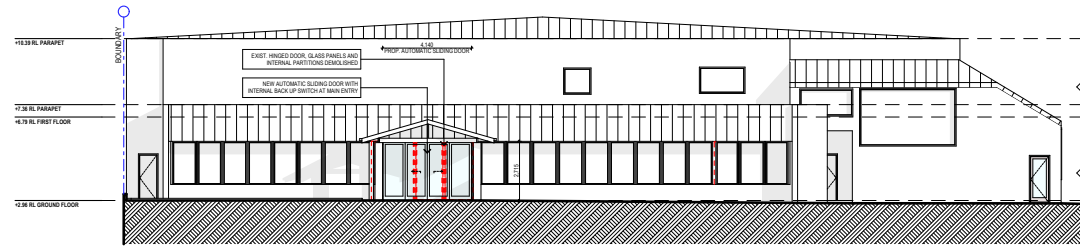
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B	4/09/2023	DA DRAWINGS REVISE
C	16/10/2023	DA DRAWINGS REVISE - BCA
D	26/10/2023	DA ADDITIONAL DRAWINGS
E	31/10/2023	DA DESIGN REVISE

ALTERATIONS & ADDITIONS FOR PROPOSED CHANGE OF USE  
 77 BASSETT STREET, MONA VALE  
 CLIENT:  
 ROBERT JOHNSON  
 DRAWING TITLE:  
 SITE PLAN

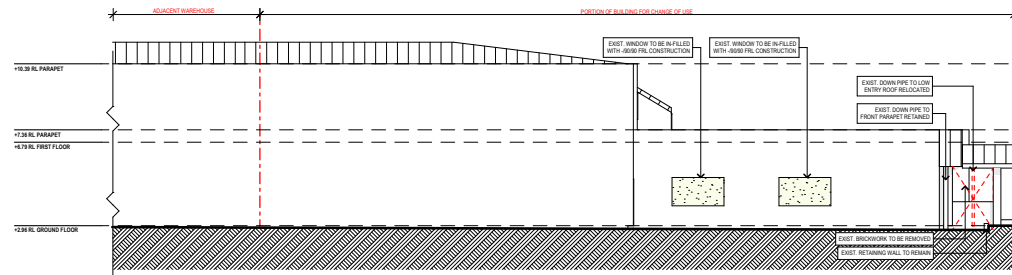
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SITE PLAN

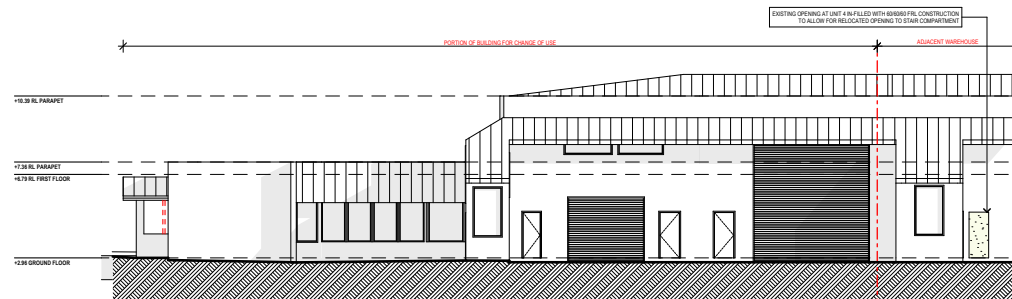
ATTACHMENT 2 : SITE PLAN AND ELEVATIONS - ITEM 3.5 - NORTHERN BEACHES COUNCIL MEETING - 22 MAY 2024



NORTH ELEVATION



EAST ELEVATION



WEST ELEVATION

NOTES (E & OE)	
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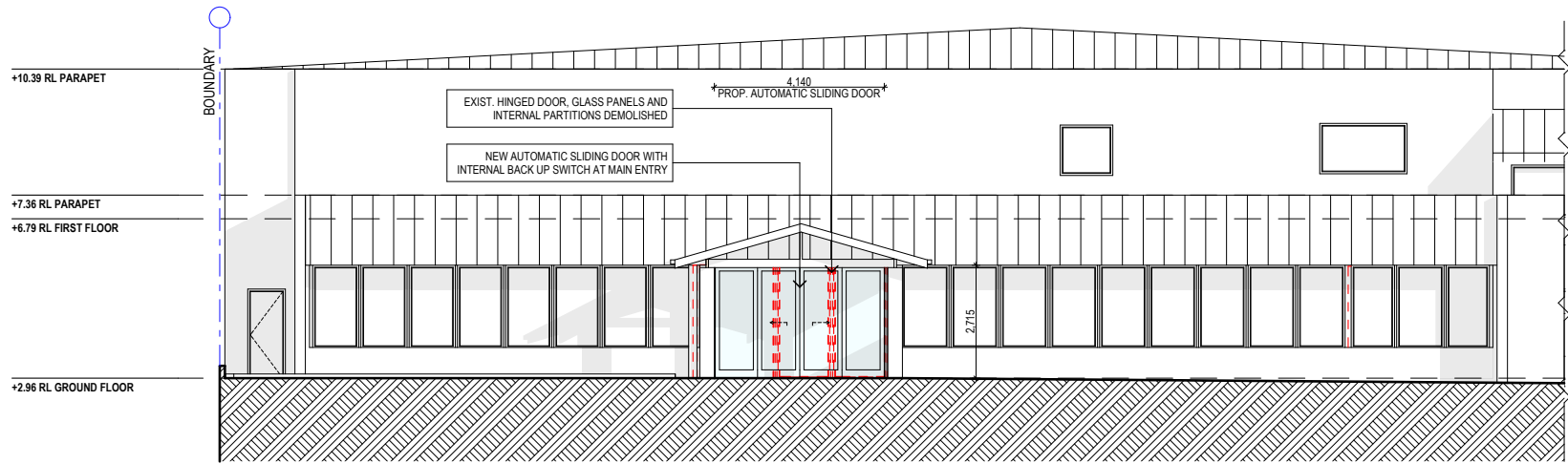
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ALTERATIONS & ADDITIONS FOR PROPOSED CHANGE OF USE 77 BASSETT STREET, MONA VALE CLIENT: ROBERT JOHNSON DRAWING TITLE: ELEVATIONS SHEET 1
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NORTH ELEVATION

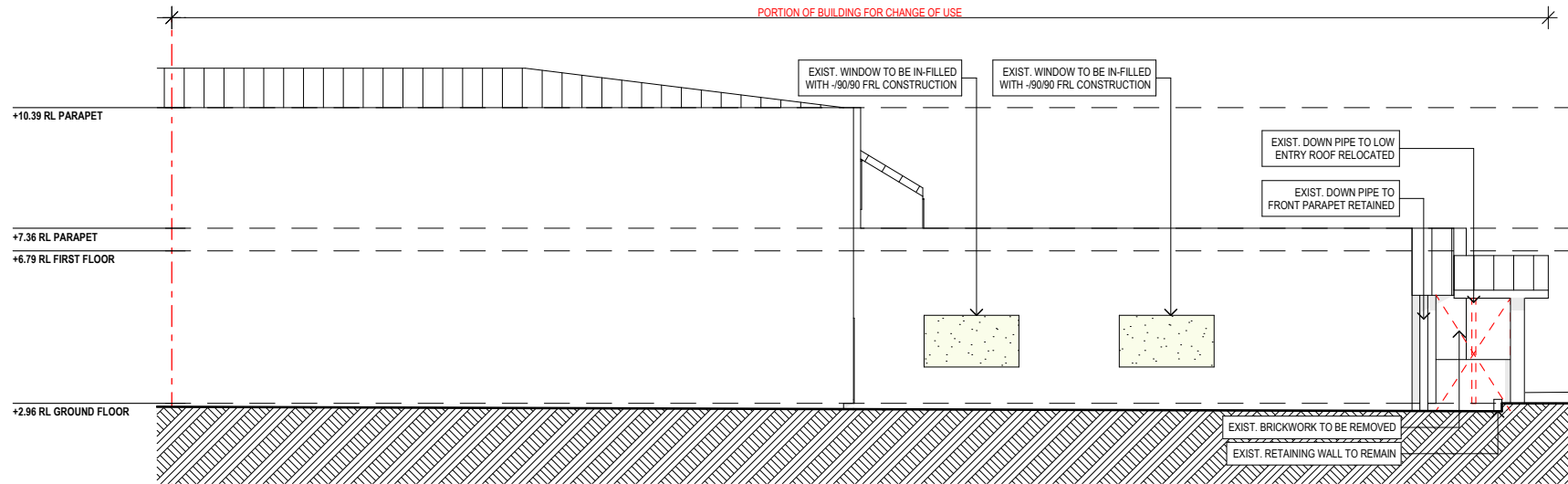
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ALTERATIONS & ADDITIONS FOR PROPOSED CHANGE OF USE
77 BASSETT STREET, MONA VALE
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EAST ELEVATION

TRUE NORTH:



NOTES (E & OE)

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ALTERATIONS & ADDITIONS FOR PROPOSED CHANGE OF USE

77 BASSETT STREET, MONA VALE

CLIENT:  
ROBERT JOHNSON

DRAWING TITLE:  
ELEVATIONS SHEET 3

DATE:  
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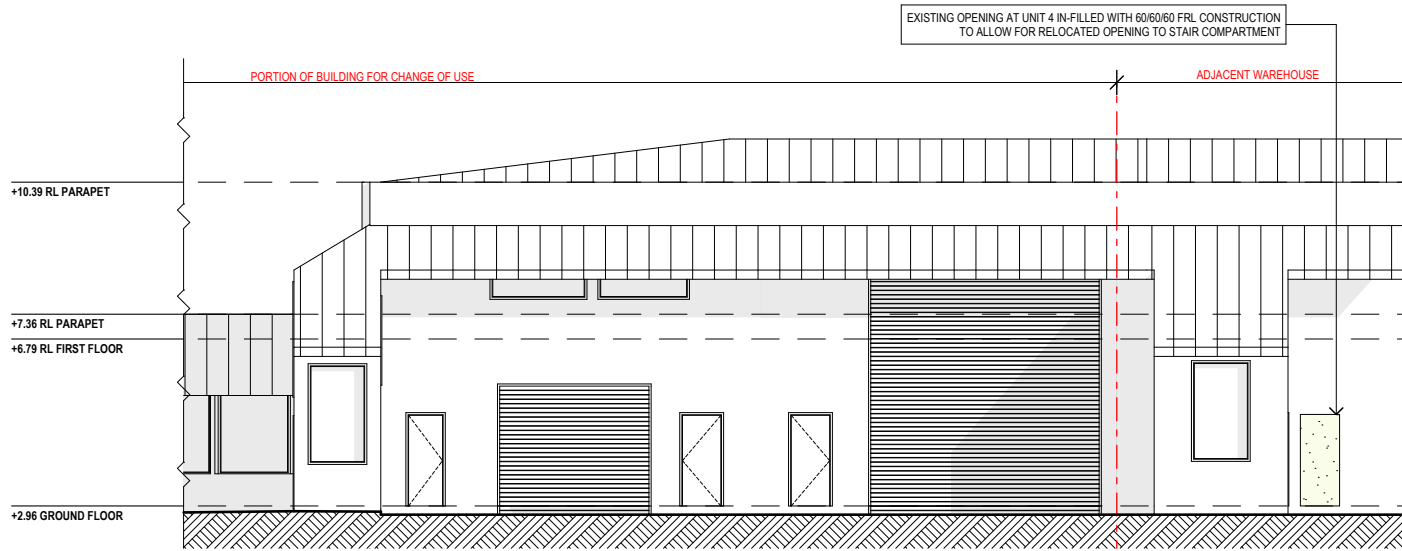
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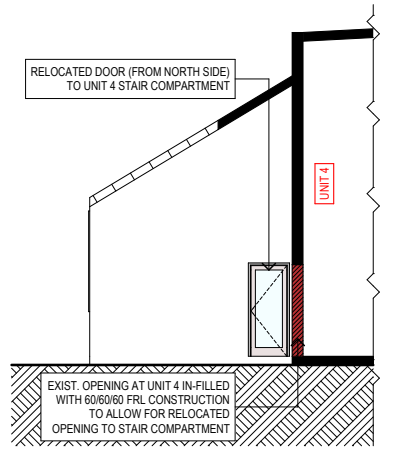
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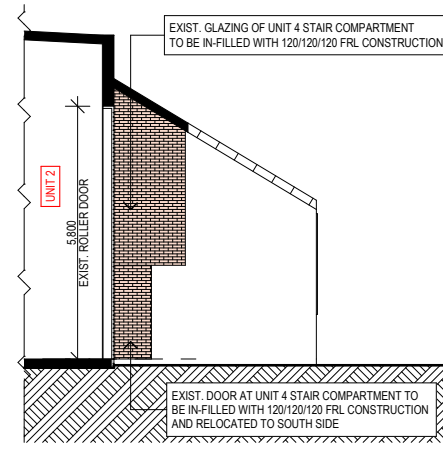
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WEST ELEVATION



UNIT 4 COMPARTMENT SOUTH ELEVATION



UNIT 4 COMPARTMENT NORTH ELEVATION



**NOTES (E & OE)**

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ALTERATIONS & ADDITIONS FOR PROPOSED CHANGE OF USE  
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