

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0556
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Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 104 DP 752046, 39 Attunga Road NEWPORT NSW 2106
Proposed Development:	Demolition works and construction of a dwelling house, including swimming pool and garage
Zoning:	E4 Environmental Living SP2 Infrastructure
Development Permissible:	Yes - Zone SP2 Infrastructure Yes - Zone E4 Environmental Living
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Lance Robert Horton
Applicant:	Lance Robert Horton

Application Lodged:	13/05/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	19/05/2021 to 02/06/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 4.1%
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,350,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The application is for demolition of the existing dwelling and construction of a new dwelling house and swimming pool, specifically consisting of:

- Upper floor master bedroom and ensuite
- Ground floor double garage, workshop, office, living/dining/kitchen, balcony and patio
- Lower ground floor three bedrooms, lounge room, terrace and swimming pool.
- Landscaping works to suite the development.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone SP2 Infrastructure

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - D10.7 Front building line (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 104 DP 752046 , 39 Attunga Road NEWPORT NSW 2106
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Attunga Road.</p> <p>The site is regular in shape with a frontage of 15.2m along Attunga Road and a depth of 44.1m. The site has a surveyed area of 678.5m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates two storey dwelling house and detached garage.</p>

The site has a moderate fall from the northern to the southern boundary, with a total elevation change of 12m across the site.

The site does not contain any significant locally native trees, however there is a large pine tree in the rear yard.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached two storey dwellings. To the west is a detached two storey dwelling and to the east is a two storey dwelling with detached garage.

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:

- Pre-lodgement Meeting **PLM2020/0118** was held on 18/06/2020 for Demolition Works and construction of a dwelling house including a secondary dwelling and swimming pool.

Application History

Following an initial assessment of the development application, Council wrote to the applicant with issues relating to the extent of building envelope breach, landscape issues, the extent of the height breach and solar access analysis. The applicant provided a response to each of these issues with amended plans and additional information. The changes resulted in lesser impact upon adjoining properties and therefore the application did not require formal re-notification. However, the amended plans were provided to the adjoining objecting property for their information and a submission

regarding each iteration of plans was subsequently received from the adjoining property.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans to address the building envelope non-compliance, landscape issues and additional shadow diagrams.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

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 Matthew Willis, dated 02/03/2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/05/2021 to 02/06/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Untapped Planning	Po Box 139 KOTARA NSW 2289

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

- View impact arising from the development for 37 Attunga Road.
- Privacy impact arising from the development for 37 Attunga Road.
- Overshadowing arising from the development for 37 Attunga Road.
- Non-compliance with the building envelope DCP control and building height LEP control, with resulting amenity impacts and the visual dominance and visual impact the development will create.

The matters raised within the submissions are addressed as follows:

- *View impact arising from the development*
Comment:
A detailed assessment against the Land and Environment Court Planning Principle has been undertake below in this assessment report regarding views.
- *Privacy impact arising from the development*
Comment:
A assessment regarding privacy follows below in this assessment report, with the proposal found to be reasonable subject to a condition requiring the kitchen window on the western elevation to consist of obscure glazing.
- *Overshadowing arising from the development*
Comment:
A detailed assessment against the solar access controls is carried out later in this report, specifically with regards to the impact upon 37 Attunga Road. The proposal is found to be reasonable on balance as detailed in this assessment.
- *Non-compliance with the building envelope DCP control and building height LEP control, with resulting amenity impacts and the visual dominance and visual impact the development will create.*
Comment:
The application is accompanied by a Clause 4.6 variation written request for the 350mm breach in building height, which is assessed in detail later in this assessment report, which includes consideration of building bulk, scale and the visual impacts of the development. The building envelope breach is also addressed in detail below. Both non-compliance's are found to be acceptable on merit following an assessment and do not cause unreasonable amenity impacts.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application is for the demolition of the existing dwelling and garage and the construction of a new dwelling, garage, and pool.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 zone Environmental Living, and the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation, • C1.1 Landscaping, • D10 Newport Locality. <p>The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees. One large Norfolk Island Pine exists upon the site and otherwise no vegetation of prominence exists.</p> <p>A Landscape Plan and a Arboricultural Impact Assessment report titled Construction Impact & Management Statement are provided with the application in accordance with Council's DA Lodgement Requirements. An amended Landscape Plan A003 issue C dated July 2021, is provided to address previous concerns and these have now been revised and are acceptable, including realignment of the walling and stairs in proximity to the Norfolk Island Pine to an increased distance from the existing Norfolk Island Pine, vegetation screening under the suspended pool along the south and east, and proposed canopy tree planting within the front and rear setbacks in appropriate locations.</p> <p>Landscape Referral raise no objections to the development application subject to the completion of landscape works and the protection of the existing Norfolk Island Pine.</p> <p><i>previous Landscape Referral comments now resolved in the amended Landscape Plan:</i></p> <p><i>The Landscape Plan provided does not include canopy tree planting to satisfy LEP clause E4 zone Environmental Living and DCP clause C1.1 Landscaping, where two canopy trees within the front setback and one canopy tree within the rear setback are required to soften the built form and add to the tree canopy of Pittwater. Additionally the Landscape Plan does not provide any softening of the undercroft to the suspended swimming pool to reduce the visual prominence of the pool structure.</i></p> <p><i>The Arboricultural Impact Assessment provides a summary that the existing Norfolk Island Pine near the proposed swimming pool should</i></p>

Internal Referral Body	Comments
	<p><i>be " ... retained, managed & protected in accordance with the 'Site Specific Tree Plan of Management'". The proposed swimming pool is suspended within much of the tree protection zone of the Norfolk Island Pine and the Arboricultural Impact Assessment thus determines that the proposal is assessed as not likely to further compromise the health of the Norfolk Island Pine, with tree protection measures as listed in the Arboricultural Impact Assessment.</i></p> <p><i>Concern is raised regarding the visual prominence of the suspended swimming pool upon the Attunga Road streetscape contrary to DCP clause D10.1 Character as viewed from a public place. The suspended swimming pool is approximately 4 metres above natural ground level, lessened by the proposed levelling of land with terraces and 1 m high retaining walls downslope. Under DCP clause D10.7 Front building line, built structures ie. swimming pools are not permitted within the front building setback and the Statement of Environmental Effects nominates this area as the front setback.</i></p> <p><i>Further landscape treatment is required to soften the bulk and scale of the suspended swimming pool, building mass, and retaining walls to satisfy DCP clauses C1.1 Landscaping, D10.1 Character as viewed from a public place, as well as D10.16 Construction, retaining walls, terracing and undercroft areas, requiring adequate landscaping to soften and screen the built forms.</i></p>
NECC (Development Engineering)	<p>The proposed driveway grades do not comply with Council's standards and as such the proposed garage level is too low. The driveway grade is to be amended to suit Council's Maximum Low profile which is available in Council's Minor Works Specification on Council's website.</p> <p>The submitted drainage design including OSD is satisfactory. The submitted Geotechnical report addresses the relevant DCP controls.</p> <p>Development Engineers cannot support the application due to insufficient information to assess the driveway in accordance with Clause 6 of Pittwater DCP.</p> <p>Amended plans submitted 30/06/21</p> <p>The amended garage door location to increase the driveway length has been reviewed and is satisfactory.</p> <p>No objection to approval, subject to conditions as recommended.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<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, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1179023S dated 17 March 2021).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	53

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

SEPP (Infrastructure) 2007

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.

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

Comment:

The proposal was referred to Ausgrid. Ausgrid advised no objections are raised and their standard safety conditions are recommended.

SEPP (Coastal Management) 2018

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

10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
 - (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
 - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
 - (c) *the carrying out of any of the following:*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
 - (d) *any other development.*

Comment:

Land not within coastal wetlands or littoral rainforest area.

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

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
 - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

Land not within proximity to coastal wetlands or littoral rainforest area.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as

“coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

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

Comment:

Land not within coastal vulnerability area.

13 Development on land within the coastal environment area

- (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) coastal environmental values and natural coastal processes,*
 - (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*

- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Comment:

Land not within coastal environment area.

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

Comment:

Land not within coastal environment area.

14 Development on land within the coastal use area

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

Comment:

Council is satisfied the development will not have an adverse impact on the matters listed in (a) due to the proximity from the coastline. The proposed dwelling is of similar scale to the surrounding buildings and therefore does not create an adverse visual impact on the coastline, as provided in a site analysis by the applicant and site inspections carried out by Council staff. The building is designed to avoid impacts upon the matters listed in (a).

As such, it is considered that the application complies with the requirements of the State Environmental

Planning Policy (Coastal Management) 2018.

15 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:

Does not increase coastal hazards.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone SP2: Yes Zone E4 : Yes
After consideration of the merits of the proposal, is the development consistent with: aims of the LEP?	Yes
zone objectives of the LEP?	Zone SP2: Yes Zone E4 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.85m	4.1%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.1 Relevant acquisition authority	Yes
5.1A Development on land intended to be acquired for public purpose	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone SP2 Infrastructure

The south-eastern corner of the site adjoining Attunga Road is zoned SP2 Infrastructure - Road Widening. There are no proposed works associated with the dwelling in this portion of the site, with all works associated with the dwelling in the E4 Zone.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.85m
Percentage variation to requirement:	4.1%

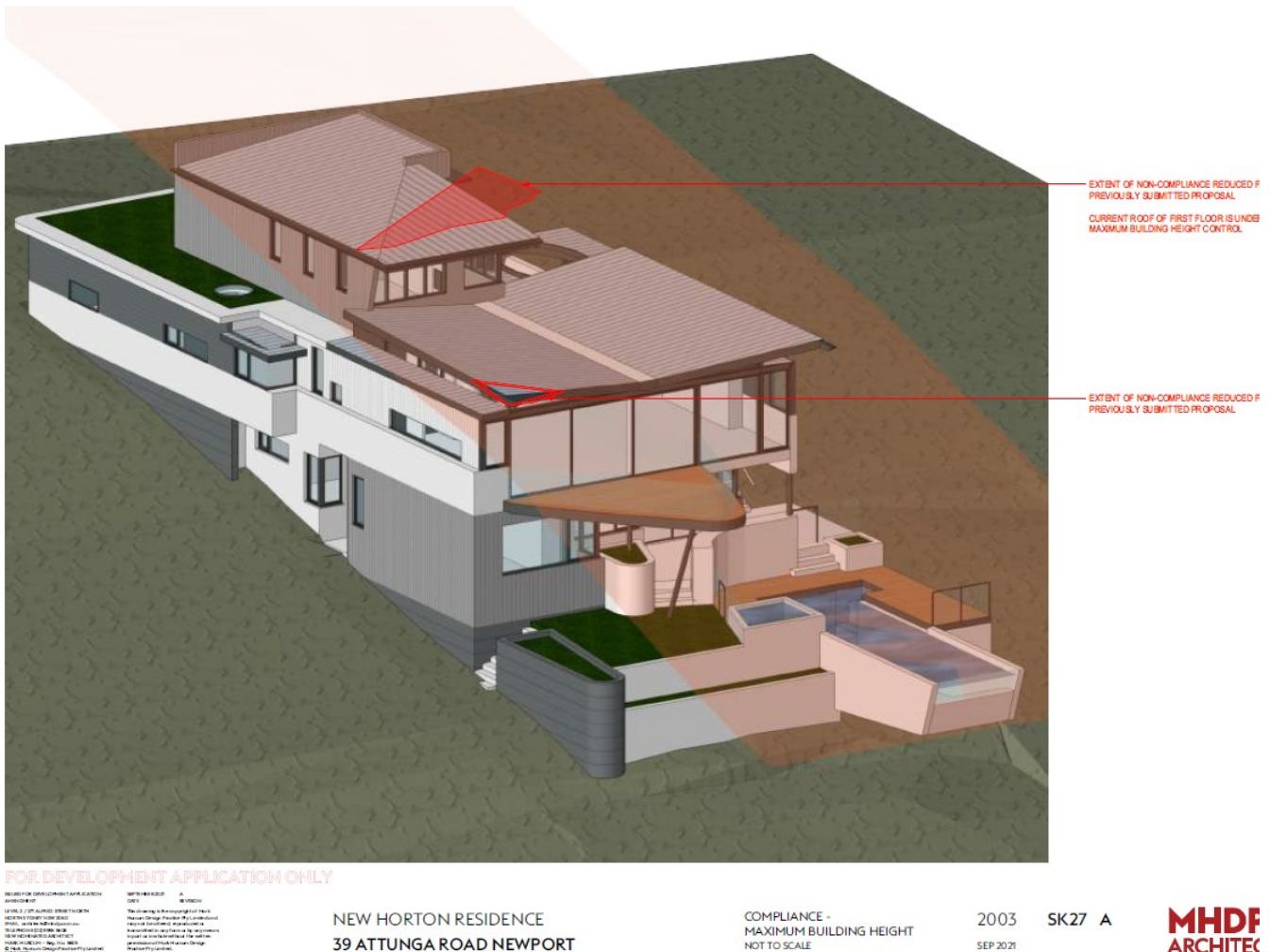


Figure 1 - Extent of non-compliance at south-western corner caused by butterfly roof form eave. Central non-compliance removed from proposal.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3 - Height of Buildings development standard is not expressly excluded from the operation of this clause.

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

The slope of land inhibits the development's ability to achieve strict compliance with the building height standard.

The proposed building footprint is located on land falling across 45m for a slope of 14°. Clause 2D of Part 4.3 of Pittwater LEP allows for a variation to the building height standard for development on sloping land. While the proposed development does not achieve the 16.7° requirement in Clause 2D, the existence of this clause in the LEP demonstrates that slope of land is a factor that affects a development's ability to achieve compliance with building height standards. This demonstrates an aspect of environmental planning that is relevant to the subject site that justifies contravening the development standard.

Strict application of the Standard is considered to be unnecessary or unreasonable in the current circumstance for the following reasons:

- *Three and four storey developments are common along Attunga Road, with many being more*

prominent than the proposed development which is set well back from the predominant southern (front) building line

- The proposed roof is negligible in its impact to the streetscape and does not result in any unreasonable impacts on amenity of adjoining properties in terms of overshadowing, privacy, loss of view or loss of solar access.*

COMPLIANCE WITH THE OBJECTIVES PERTAINING TO STANDARD TO BE VARIED

9.1 To ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality

The proposed dwelling is three storeys high which is of a similar scale to neighbouring properties in the locality. The building height limit is below the existing Norfolk Island Pine, minimising bulk and scale and maintaining the desired future character of the Newport Locality in which it is located.

9.2 To ensure that buildings are compatible with the height and scale of surrounding and nearby development

The proposed dwelling is of a similar scale to neighbouring properties and is designed to step down the slope of the land to integrate with the landform and landscape. While the proposed design is three storeys at its southern end, it has a highly articulated rear elevation that reduce the appearance of bulk when viewed from Attunga Road below. Three and four storey developments are common along Attunga Road, with many being more prominent than the proposed development which is set well back from the predominant southern (front) building line and will be screened by the existing Norfolk Island Pine to be retained on site.

9.3 To minimise any overshadowing of neighbouring properties

The proposed building has been designed to ensure the impact of overshadowing on neighbours is minimised. To achieve this, the proposed building footprint is situated behind the predominant building line to the south and has been pulled back on its northeastern side. The portion of the building not complying with building height has a negligible impact on overshadowing neighbouring properties. Due to the orientation and the slope of the land, the non-complying portion overshadows only the far corner of the southern garden area at 37 Attunga Road in the morning of the winter solstice. It does not cause any overshadowing of any windows at 37 Attunga Road on the winter solstice. After 11:45am the proposed development has no effect on overshadowing at 37 Attunga Road.

9.4 To allow for the reasonable sharing of views

The height of the proposed development does not affect the sharing of views with adjoining properties due to its location at the top of the ridge and with no locations from neighbouring properties or the public domain which overlook the building.

9.5 To encourage buildings that are designed to respond sensitively to the natural topography

The development steps down and along the slope of the topography to integrate with the landform and landscape, and minimising site disturbance. It is difficult to maintain a fully compliant building height under the current controls due to the nature of the topography and site footprint limitations. The proposed dwelling and driveway will require some excavation on site. To reduce the amount of excavation required, the building extends the maximum building height plane.

9.6 To minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The proposed dwelling will have a minimal visual impact on the surrounding natural environment as shown above. There is one Norfolk Island pine on the site and the development proposes the retention of this tree. The development will not dominate the site and will be screened by the Norfolk Island Pine to be retained. All native tree canopy is retained to provide feed trees and undergrowth for animals and to enhance wildlife corridors.

The subject site is not a heritage item and not located within a heritage conservation area.

Council Comment:

Council generally agree with the assertions made by the application in the written request to vary the

development standard. The minor encroachment of the butterfly roof form does not directly contribute to a view impact or create unreasonable overshadowing, with reasonable solar amenity maintained for 37 Attunga Road as detailed in the assessment of solar access later in this report. The butterfly roof form provides additional sunlight amenity for the subject site and provides the intended architectural and visual outcome without an unreasonable impact and therefore, this can be supported.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The applicant has provided a visual analysis and comparison of the scale of the proposed building in comparison to the adjoining buildings along Attunga Road and the immediate vicinity of the site. When viewing this analysis and undertaking a visual inspection of the site, the building is considered to be compatible with the scale and style of buildings along Attunga Road which includes two and three storey dwellings with open balconies capturing coastal views. The proposal is largely within the 8.5m height limit with the exception of a minor portion of the roof form, with this encroachment not considered to render the development inconsistent with the scale of the development in the locality or character of the area.

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

Comment:

As discussed above, the proposed development is largely beneath the 8.5m height limit with the exception of the portion of the roof form. The sites along Attunga Road all present a similar two and three storey scale with varied roof forms to provide a variety of styles of architecture and following a visual analysis of the development along Attunga Road, Council is satisfied the development is consistent with nearby and surrounding development.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The applicant has provided a thorough analysis of the overshadowing impacts of the development, including 3D solar access diagrams which demonstrate the area of encroaching butterfly roof form does not have a direct impact on the dining/living room window of the proposed development. The adjoining property will retain a reasonable amount of solar access consistent with Council's controls, as discussed in detail later in this report.

d) to allow for the reasonable sharing of views,

Comment:

The proposed development maintains views for the surrounding properties, with the adjoining property at 37 Attunga Road maintaining the south facing views of Newport beach over the rear boundary from the living room and kitchen. The portion of non-compliant roof form does not have a direct impact upon views. A view analysis is undertaken later in this assessment report.

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

Comment:

The building reasonably steps with the topography of the land and minimises cut and fill despite the moderately sloping land. The roof form has been scaled back to minimise the extent of encroachment, whilst maintaining the desired architectural design and amenity for the proposed development.

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

Comment:

The site is not adjacent to a heritage item or heritage conservation area. The site is visible from Newport Beach being placed on top of the southern headland along Attunga Road. The applicant has provided a visual analysis of the site in the context of the surrounding buildings along Attunga Road which demonstrates the proposal will fit within the surrounding building height and scale, not causing a visual impact upon the scenic quality of the coastal headland. The building is well articulated and the minor encroachment of the roof form is not considered to result in a building that is out of place or visually prominent in the context of the surrounding buildings.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
Comment: The proposed development has demonstrated that the surrounding properties will retain reasonable sunlight amenity, views and visual privacy. The proposed development does not require the removal of any significant canopy trees or vegetation and the development proposes a moderate amount of cut/fill despite the slope of the land. The proposal is compatible with the scale of the surrounding buildings along Attunga Road and highly articulated and therefore not considered to have a detrimental visual impact on the scenic qualities of the Headland from a both long distance or a short distance perspective.
- *To ensure that residential development does not have an adverse effect on those values.*
Comment: The subject site does not have an specific ecological or scientific value with regards to biodiversity. The proposal contains a landscape scheme to provide native landscaping to add to the landscaped character of the locality. As described above, the proposal is compatible with the scale of development along Attunga Road and therefore not resulting in an adverse impact of the aesthetic values of the Newport Locality.
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
Comment: The proposal consisting of a single dwelling house is a 'low density' form of development. The building steps with the topography of the land where practical and the roof form is generally below the height with the exception of a minor (350mm) encroachment at the south-western corner. The building is well articulated to respond to the sloping nature of the site and reduce the visual prominence of the building.
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*
Comment: The proposed development does not require the removal of any significant locally native canopy trees and provides new native landscape planting as per the landscape plan and conditions.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) *site layout, including access,*
- (b) *the development's design and construction methods,*
- (c) *the amount of cut and fill that will be required for the development,*
- (d) *waste water management, stormwater and drainage across the land,*
- (e) *the geotechnical constraints of the site,*
- (f) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) *the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

- (b) *the consent authority is satisfied that:*

- (i) *the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
- (ii) *if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
- (iii) *if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	1.5m - Garage 6.5m - Dwelling Facade	N/A	No
Rear building line	6.5m	8.1m	N/A	Yes
Side building line	2.5m	2.59m (East) - Facade	N/A	Yes

		1m - Pergola		No
	1m	1m (West)	N/A	Yes
Building envelope	3.5m	Outside envelope	N/A	No
	3.5m	Outside envelope	N/A	No
Landscaped area	60%	51.6% (350.3sqm) 57.6% (w variations)	N/A	No

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 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	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.23 Eaves	Yes	Yes
D9.17 Scenic Protection Category One Areas	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 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:

The view to be affected is the ocean horizon looking east and south-east from the dwelling at 37 Attunga Road. The view to be impacted does not contain any land/water interface or particularly iconic feature, with the impacted area consisting of the ocean horizon. The below figures 1 -5 show the views from the dwelling at 37 Attunga Road.



Figure 1 - Left, photo looking east from kitchen window, photo provided by owner 37 Attunga

Road.

Figure 2 - Right, photo looking east from mezzanine window, provide provided by owner 37 Attunga Road.



Figure 3 - Photo looking east from the dining room window, photo provided by owner 37 Attunga Road.



Figure 4 - Looking south-east and south from the dining room, photo taken by assessing officer.



Figure 5 - Photo taken looking south and south-east, photo taken by assessing officer.

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

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

Comment to Principle 2:

The view to be impacted is from a sitting and standing position from the dining room, kitchen and living room. However, the portion of views to be impacted are obtained over the side boundary of the property, from the eastern facing windows of the kitchen, living room, dining room and mezzanine. As per the planning principle, the retention of views over side boundaries is often unrealistic.

3. Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is

20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

The view that is lost is towards the east of the ocean horizon over the side boundary from the kitchen, dining room, living room and mezzanine. This is shown in Figures 1 to 3. However, as shown in figures 4 and 5, substantial uninterrupted views looking over the rear boundary from the south-east through to the south-west are retained from the kitchen, dining and living room, as well as the deck attached to the living room. The view of Newport Beach, Newport Reef, Bungan Head and district views of Newport are retained and will not be impacted by the development. When considering the views that are retained for the whole property, the view impact is considered to be 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:

The proposed development does present a non-compliance with the western building envelope control and a minor breach of building height (350mm). However, these two controls do not give rise to direct view impacts resulting from the development. Rather, it is the southern alignment of the proposal with the two neighbouring properties (37 Attunga and 31 Attunga) which influence the view corridor to be impacted. The below figure demonstrates that the south-western corner of the building facade is in alignment with the predominant building line of the adjoining buildings and therefore, is considered to have a reasonable setback to the southern boundary. Furthermore, the south-western facade is setback 2.3m behind this building alignment and is well behind the predominant building line set by the two adjoining building facades. Given the facade of the building is consistent with the alignment of the adjoining buildings, the view impact over the side boundary resulting from the south-western corner of the building is considered to be reasonable and entirely consistent with how the site could reasonably be developed given the alignment of the adjoining buildings.

As south-western corner of the building is setback behind this alignment and further increase to the setback is not considered warranted, given the substantial views that are maintained looking south from the living room, dining room, kitchen and balcony from the dwelling at 37 Attunga Road. The south-western corner of the building being setback 2.3m behind the building line shows the design is skillfully designed to provide for a reasonable view corridor, even through this is over a side boundary.

The proposed balcony has a minor protrusion of the of established building line, however, this balcony has a glass balustrade and is centrally located within the property which still allows a view corridor to be maintained through to the south-east. The balcony is also designed with splay to allow a view corridor through to the south-east, demonstrating skillful design.

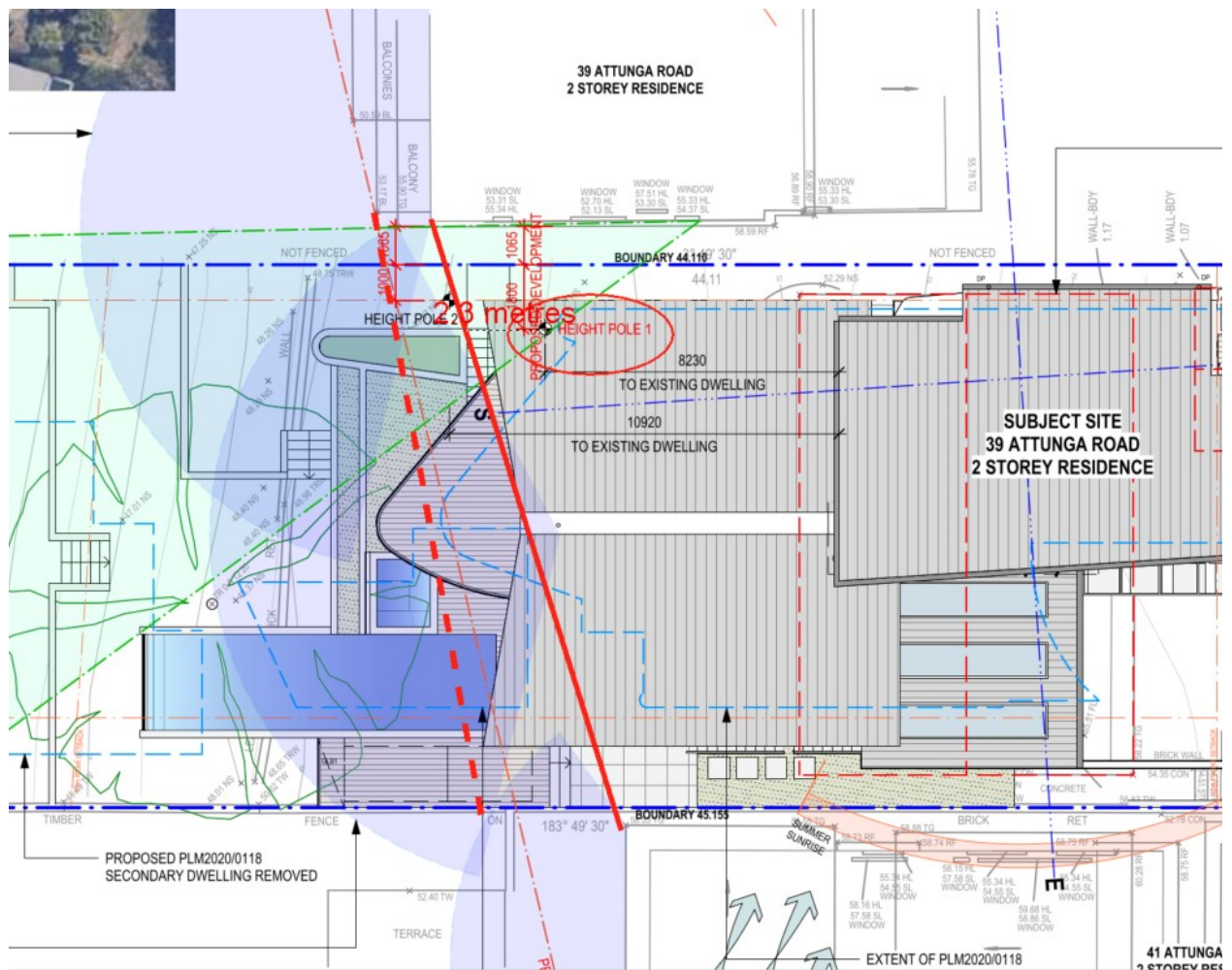


Figure 6 - Southern building alignment. Hard red line showing the facade alignment established by the two adjoining buildings on 39 and 41 Attunga Road. The south-western corner setback 2.3m behind this alignment. The dotted red line showing the alignment established by the two adjoining balconies on 39 and 41 Attunga Road.

- 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 view corridor between buildings from the road is maintained, consistent with existing situation.

Canopy trees take priority over views.

Comment:

No canopy trees are proposed to be removed to allow for views.

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

C1.4 Solar Access

The application has been considered against the solar access controls within the DCP which require the following:

Private Open Space to receive 3 hours between 9am and 3pm

Comment:

The rear yard and at grade private open space of the the subject property, as well as the two adjoining properties 37 and 41 Attunga Road are located directly south and downslope of the dwelling upon each site. As shown in the submitted shadow diagrams, the at grade open space directly to the south (rear) of each property is self shadowed at present by virtue of the lot orientation. The proposed development maintains an appropriate southern building alignment with the two adjoining properties and any development of the subject land for a two storey dwelling at this alignment would result in overshadowing to the south facing rear yards of the adjoining properties, given the slope and orientation of the sites. The area to the south of the dwelling is highly susceptible to overshadowing given the slope of the land and the southern orientation and would experience the same level of impact in a fully complying scheme, notwithstanding the envelope and height encroachments.

However, the southern side of the property is not the only area within the site capable of being used for outdoor private open space. The adjoining property to the west (37 Attunga Road) maintains a generous grassed area to the north of the building which can be used as an alternate open space area and therefore, there is an area within the adjoining site that will continue to receive the full amount amount of solar access (3 hours between 9am and 3pm) which is not impacted by the development or self-shadowing.

Similarly, the south facing decks are already subject to self shadowing by virtue of the orientation. Whilst these south facing decks receive limited solar access at present due to self shadowing, they are oriented this way to capture the significant coastal views looking south over Newport Beach, which is the trade off given the orientation of the land.

Therefore, there will be an area within each adjoining site that maintains a compliant amount of solar access with a northern orientation, with the southern setback areas highly susceptible to overshadowing in any event due to the slope of the land and orientation of the sites. The proposed development is not considered to result in an unreasonable impact to the private open space areas of the adjoining properties.

Windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).

Comment:

The dwelling at 37 Attunga Road benefits from a large north facing clerestory window that provides sunlight amenity to an upper mezzanine space and down into the living room/dining room area. This north facing large clerestory window will maintain year round solar access and is not be impacted by the proposed development. The second lounge room at the northern extent of the building will maintain full solar access via the north facing window.

The eastern facade of the dwelling at 37 Attunga Road has a dining room window, as labelled on the

submitted elevation shadow diagram in Figure 1 below. There has been a submission raised regarding impact to this window and more generally the windows on the eastern elevation. The dining room window also services the living room at the southern western extent 37 Attunga Road and therefore this window is addressed below with regards to the control requiring 3 hours to the principle living area. The assessment is also made in response to the building envelope encroachment to the western side and the 350mm building height non-compliance at the south-western butterfly roof form.

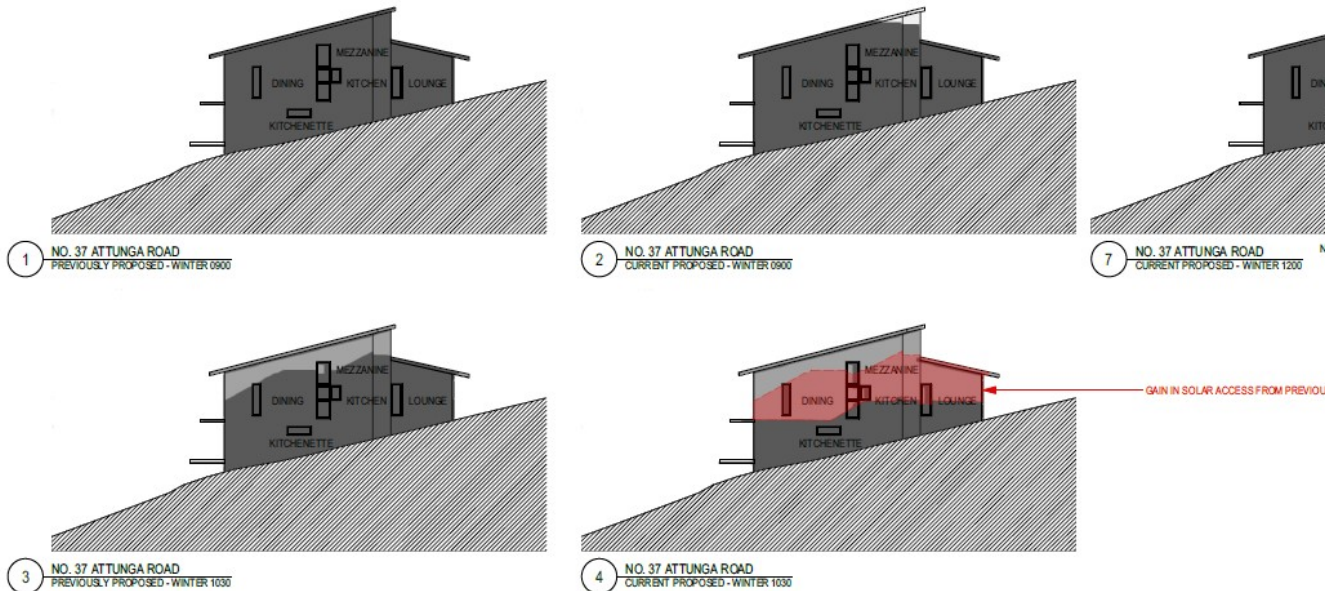


Figure 1 - Elevation shadow diagrams submitted with application.

The original plans submitted with the application resulted in a larger impact to the dining room window as a result of the first floor master bedroom configuration (comparison of impact shown in Figure 1 above). To improve solar access to the dining room window, the plans were amended to increase the setback to the master bedroom from the western boundary by an additional 2.3m, resulting in improved solar access to the dining room window which will receive 50% solar access by 10:20am (figure 2). Figure 2 shows that sunlight does not hit the dining room window until 9:41am in either a fully complying scheme or the proposed scheme. Therefore, a full 3 hours of solar access directly to the east facing dining room window is not possible in either a complying scheme or the proposed scheme, with solar access to the dining room window available at 10:20am in both scenarios (figure 3).

However, it must be considered in the assessment that the eastern facing dining room window does not provide solar access to the main living area and dining room in isolation. The solar access provided by the north facing clerestory window must be taken into account in the assessment, with this window providing sunlight through to the living room as well. This clerestory window will continue to receive solar access throughout the day and when combined with the solar access received to the east facing window by 10:20am, will provide the minimum required 3 hours.

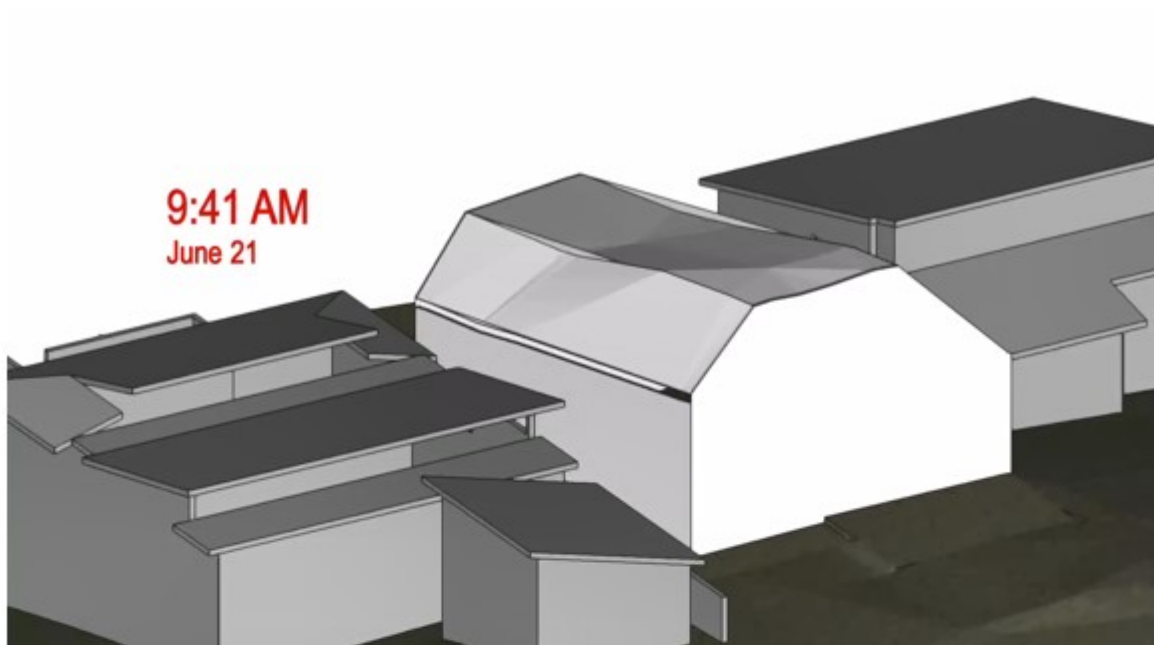
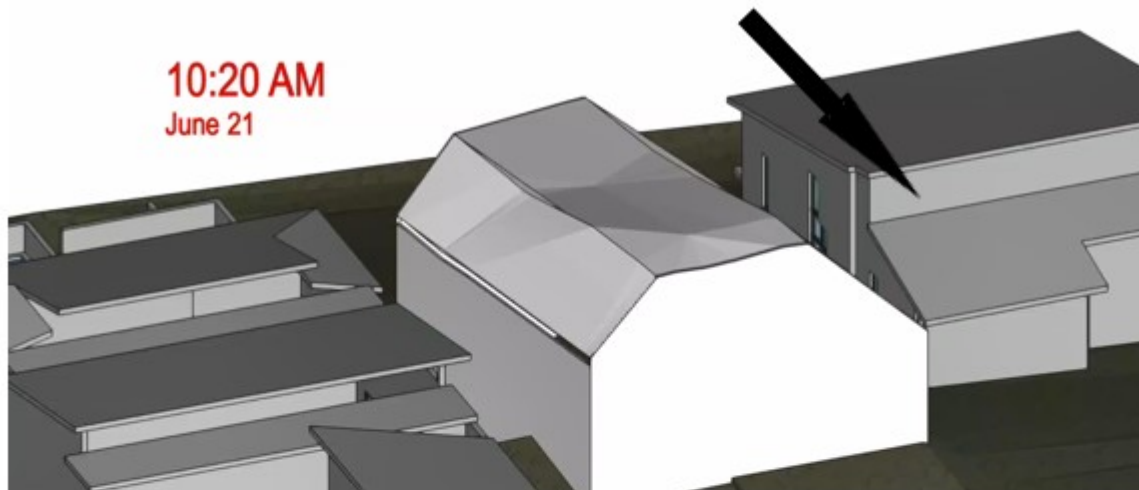


Figure 2 - Sun view diagram 9:41am, no sunlight received in either scenarios prior to this time.

North Facing clerestory window



Dining room window

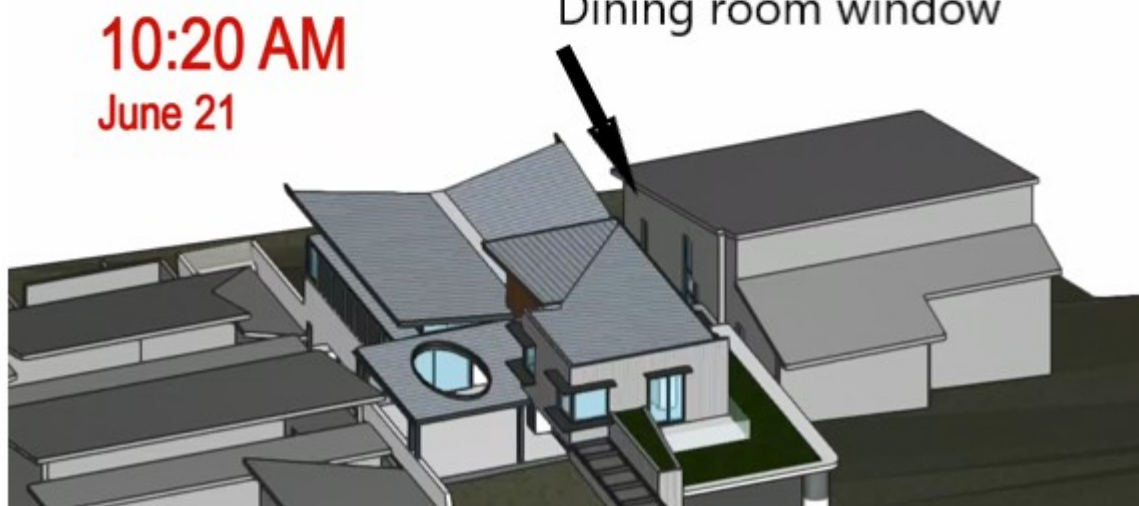


Figure 3 - Sun view diagram, solar access to dining room window received by 10:20am.

In regards to the building height breach at the south-western corner of the butterfly roof form, as seen in Figure 2 and 3 this element of the building does not result in additional impact to the eastern facing windows when compared to a fully compliant scheme. In this regard, the building height breach does not cause an unreasonable solar access impact.

In regards to the building envelope breach, the applicant's amended scheme which moved the master bedroom and additional 2.3m west reduced the extent of non-compliance and improved solar access, compared to the original plans. When compared to a fully compliant scheme, the envelope breach results in some additional overshadowing between 9:41am and 10:20am (39 minutes) to the eastern facing dining room window. However, the solar access to the living room/dining room via the eastern facing window cannot be looked at in isolation as the north facing clerestory window will continue to receive full solar access during this time, with the combination of both windows resulting in the minimum 3 hours solar access. Therefore, the 39 minute loss in solar access to the eastern facing

dining room window is acceptable, when considering the overall solar amenity received by all windows which provide sunlight to the living area of 37 Attunga Road, with sunlight continuing to be received via the north facing clerestory window and in combination with the solar access received post 10:20am to the eastern facing window.

Overall, the adjoining properties will continue to receive an adequate amount of solar access in accordance with the controls and the proposed development is supported on merit, notwithstanding the breach of the building envelope or building height control.

C1.5 Visual Privacy

The dwelling has been designed in a way that retains reasonable privacy to the neighbouring properties, with the living room windows on the ground floor orientated looking south over the rear boundary. The deck off the ground floor is centrally located within the lot to provide additional spatial separation for the adjoining properties and an open deck is not an uncommon feature for properties along Attunga Road to capture the southern views.

The kitchen window may result in direct views between the two properties. In this regard, a condition of consent is recommended that obscure glazing is provided to the kitchen window on the western elevation to resolve privacy. The kitchen will still enjoy views to Newport Beach and sunlight access via the obscure window and clerestory window above.

Windows to the upper floor master bedroom have been minimised on the western elevation with main views orientated to the south, with a privacy screen provided on the eastern elevation.

D10.7 Front building line (excluding Newport Commercial Centre)

DCP Control

The DCP requires a setback that is 6.5m or consistent with the prevailing building line (whichever is the greater).

The DCP also contains the following variation clause "Where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable".

The subject site has an existing garage within the front setback. The adjoining property to the east also has a zero setback double garage, along with a number of other properties along Attunga Road. Therefore, the prevalence of reduced setback garages are a consistent feature on Attunga Road.

The proposed garage is setback 1.5m from the front boundary, with the remainder of the dwelling setback a compliant 6.5m.

Merit Consideration

With consideration of the variation, the proposal is assessed against the outcomes of the control as follows:

Achieve the desired future character of the Locality. (S)

Comment: The proposal presents as a two storey building from the main street address, within a landscaped setting, which is consistent with the desired future character of the area. The building is well

articulated and is consistent with the spatial proportions of surrounding dwellings within the vicinity of the site.

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

Comment: The proposal results in a satisfactory view sharing outcome, as addressed elsewhere within this report.

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

Comment: The proposed development does not adjoin a main road.

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

Comment: The proposal does not result in any significant canopy trees being removed and adequate space is provided for new landscape planting.

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

Comment: Not required on this road, not being a major road.

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

Comment: The building from the streetscape presents as a two storey building (from the northern side of Attunga Road) and standing to the south of the site on the lower portion of Attunga road the building is stepped back with the topography of the site, consistent with other buildings along Attunga Road. There is sufficient area in the southern setback zone for landscape planting to soften the development.

To encourage attractive street frontages and improve pedestrian amenity.

Comment: The street frontage is well articulated, has a landscape zone and does not impact upon pedestrian amenity.

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

Comment: The proposed garage replaces an existing zero setback garage and reflects the spatial proportions of the building to the east, which also has a reduced setback garage.

The proposed development is considered to be consistent with the required outcomes of the control and therefore, the variation to the control is supported in this particular circumstance.

D10.8 Side and rear building line (excluding Newport Commercial Centre)

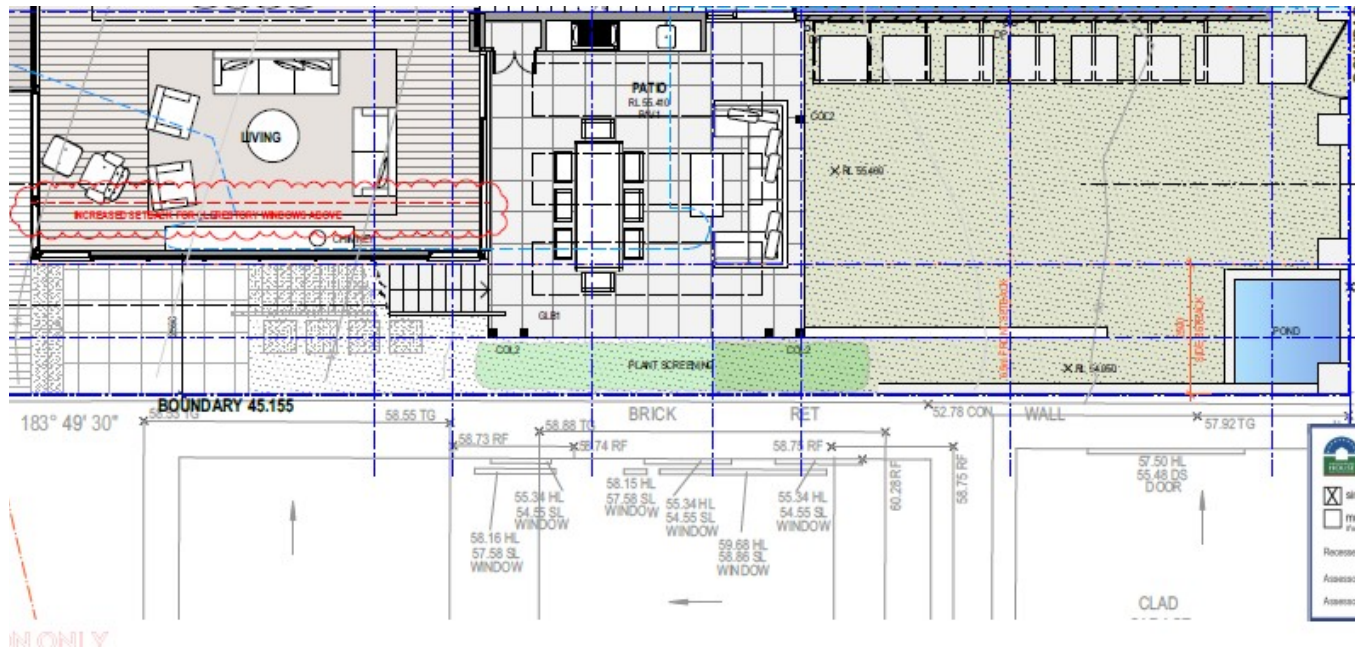
DCP Control

The DCP requires a 2.5m side setback to one side and a 1m setback to the other side.

The proposed development provides setbacks of between 1m and 3.3m on the western side (compliant with the minimum 1m requirement).

The proposed development provides a compliant 2.5m setback to the eastern facade, however the

outdoor patio is setback 1m, as shown in the below extract. Therefore, the patio is non-compliant and considered against the merits of the control below.



Merit Consideration

The patio is non-compliant and considered against the merits of the control below.

To achieve the desired future character of the Locality. (S)

Comment: The proposal presents as a two storey building within a landscaped setting, which is consistent with the desired future character of the area. The building is well articulated and is consistent with the spatial proportions of surrounding dwellings within the vicinity of the site.

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

Comment: The patio is an open style portion of the building with a flat roof, that does not add additional visual height or bulk and scale to the building overall.

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

Comment: Reasonable view sharing outcome is achieved as addressed elsewhere within this report.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

Comment: Reasonable view sharing outcome is achieved as addressed elsewhere within this report.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

Comment: Landscape screening is proposed within the 1m setback zone adjacent to the patio to assist with mitigating privacy and overlooking, as well as boundary fencing. The patio does not adjoin any living room windows which would be impacted from overlooking.

Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)

Comment: Sufficient area exists within the site for landscape planting and new canopy trees, as required by the recommended conditions.

Flexibility in the siting of buildings and access. (En, S)

Comment: Access is maintained around the building.

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

Comment: No significant trees are removed from the site and there is sufficient area for new canopy trees to reduce the built form as viewed from the road.

To ensure a landscaped buffer between commercial and residential zones is established. (En, S)

Comment: Not applicable to the development.

The proposed development achieves the required outcomes of the control and therefore, the variation to the control is supported in this particular circumstance.

D10.11 Building envelope (excluding Newport Commercial Centre)

DCP Control

The DCP requires that the building be within a 45 degree envelope projecting 3.5m above the side boundary (eaves and sun shading devices are excluded from the control).

The DCP contains a variation clause which permits encroachment of the envelope on a site with a slope of 16.7 degrees or more. The subject site has a slope of 14 degrees and does not technically meet this requirement, however, Council may still consider a variation to the control on merit.

The extent of envelope breach is shown in the below figures for the western and eastern boundary. It is noted that the original plans submitted with the applicant had a much more substantial breach of the building envelope caused by the upper level master bedroom. Amended plans were received which shifted this element away from the western boundary to increase compliance and improve solar access. Furthermore, the extent of the butterfly roof form at the southern end of the building was reduced, with the roof form lowered and the eave projection reduced.

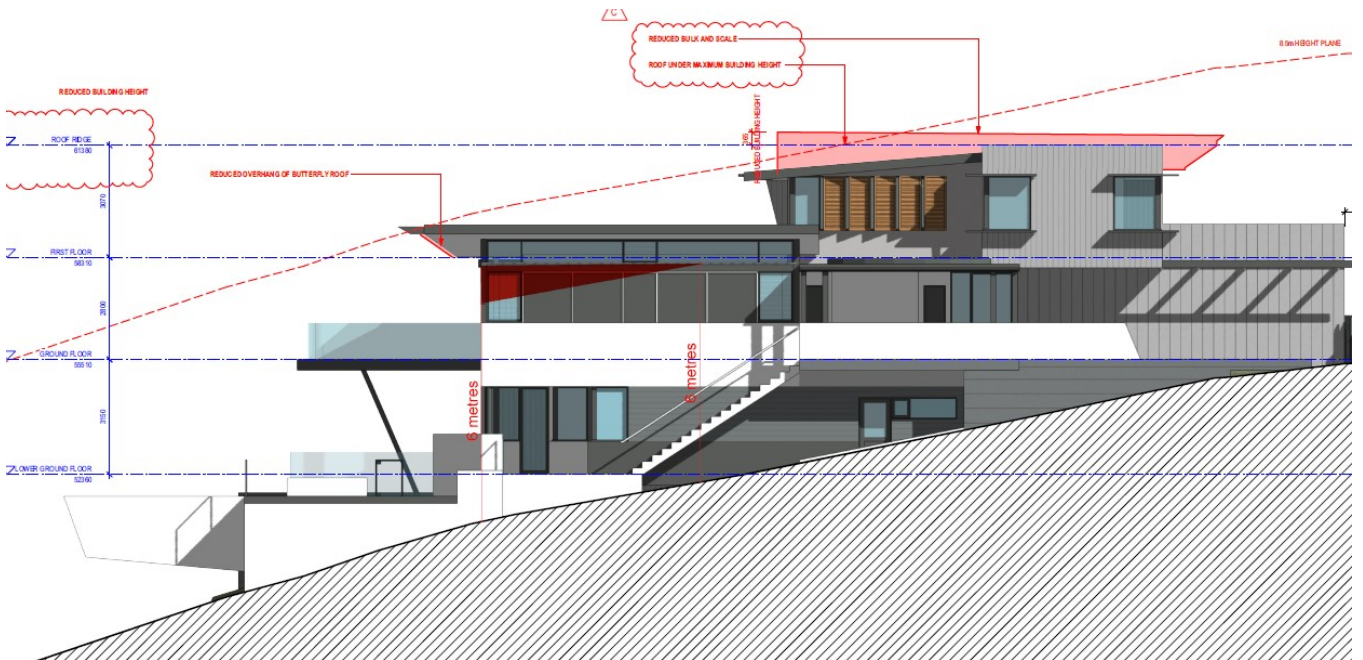


Figure 1 - Extent of eastern envelope encroachment shown in dark red.

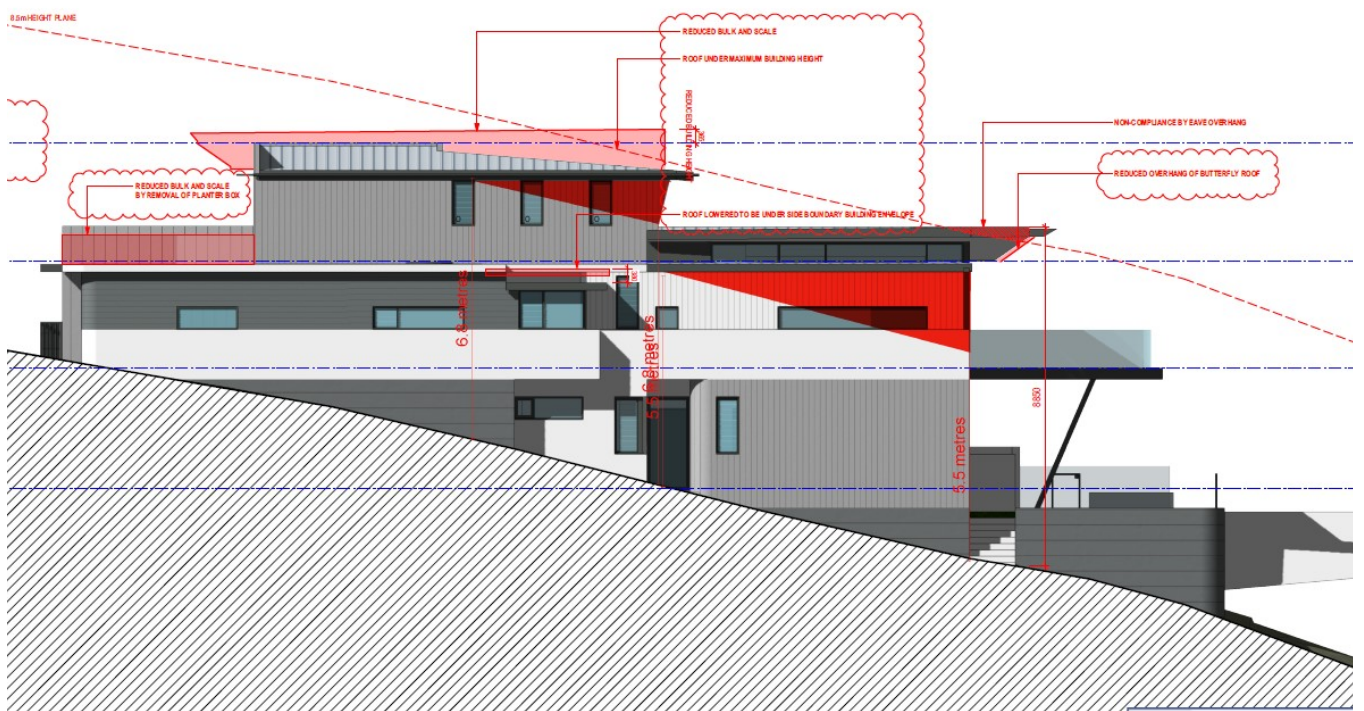
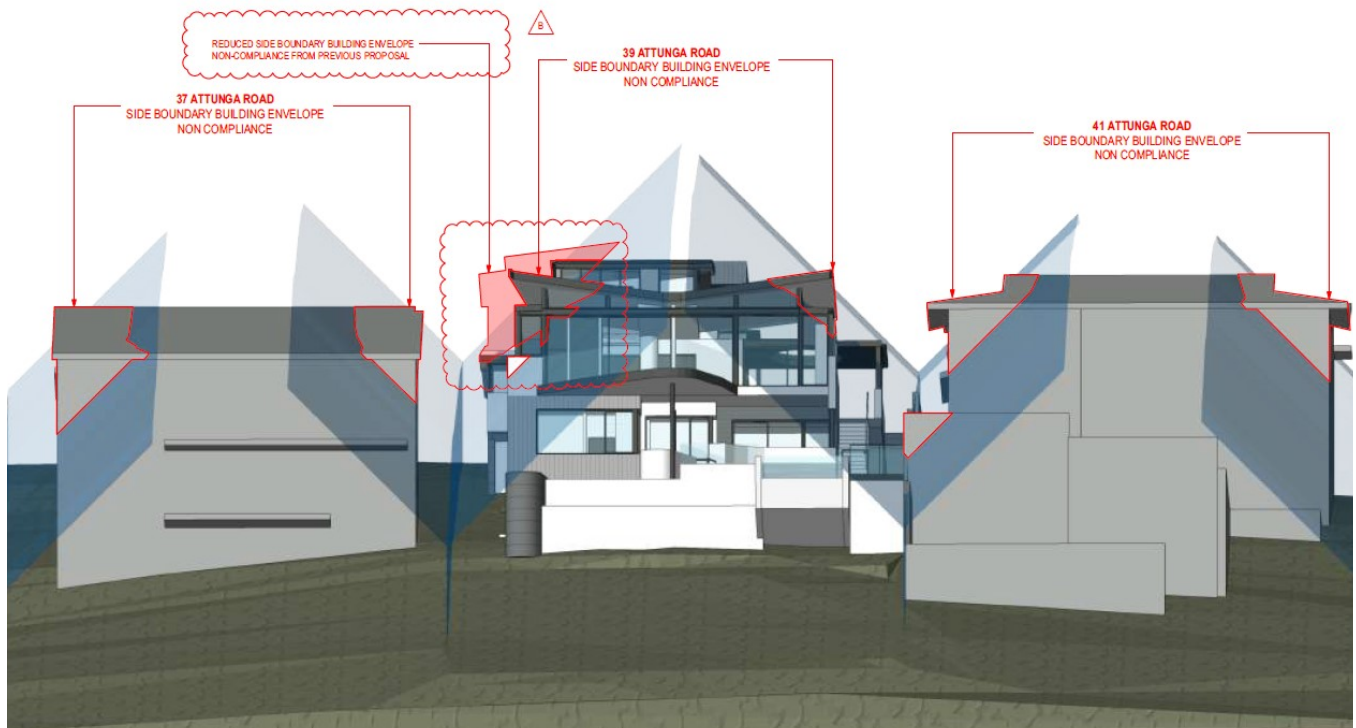


Figure 2 - Extent of western envelope encroachment shown in dark red.



TYPICAL VIEW FROM BELOW PROPOSED DEVELOPMENT

Figure 3 - Applicant's analysis of envelope encroachment and streetscape, looking from the south of the buildings.

Merit Consideration

To achieve the desired future character of the Locality. (S)

Comment: The area is characterised by two and three storey residential dwellings capturing views looking south to Newport Beach, with a variety of architectural styles, all being detached buildings within a landscaped setting. The proposed building is a two and three storey detached dwelling, with a landscaped area within the front and rear setback and generally matching the alignment of buildings along the Attunga Road. The building is of similar scale to the recently developed sites which are a variety of architectural styles. The proposed development is well articulated throughout, with a variety of roof forms, architectural features and facade finishes to break up the building scale.

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 design is well articulated and presents as a high end addition that will enhance the streetscape of Attunga Road via the well modulated design and landscape planting in the front and rear setback. The building generally sits below the 8.5m height with the exception of a minor encroachment of the roof form (350mm), however this minor encroachment will not render the building excessive for the site. The building will sit below the level of the pine tree to the south, with no other significant trees on the site. Tree planting is required as part of the consent conditions and landscape plan.

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

Comment: The building facade is generally consistent with the southern building alignment provided by

37 and 41 Attunga Road, with the exception of the pool and open balcony, which do not cause unreasonable building bulk or amenity impacts. The reduced setback garage is consistent with the adjoining development to the east and is suitable given the site gradient. The building facade provides side setbacks consistent with the DCP with the exception of an open outdoor terrace area, which is addressed in detail elsewhere in this report and considered acceptable.

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

Comment: The building is well articulated throughout and provides a variety of projecting elements as well as modulation in material to break up the building bulk and scale. The upper floor master bedroom has been stepped in to reduce the bulk and scale as well as the clerestory window forms recessed within the building to provide additional articulation. Given the architectural treatment and variation provide to the facade, the encroachment to the envelope is supported. Although the land is not quite at 16.7 degrees, the control recognises that the slope of the land may be a factor in considering a variation to the control. As seen in Figure 1, 2 and 3 the slope of the land contributes to the encroachment of the envelope which is not uncommon on sloping sites in the Newport Locality (and shown in the applicants analysis of surrounding sites). The building is suitably stepped with the land without resulting in excessive excavation.

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

Comment: The non-compliance with the building envelope control does not directly attribute to additional view impacts, rather, it is the alignment of the buildings to the southern boundary. A view sharing assessment is undertaken elsewhere within this report and the proposal is found to result in reasonable retention of views for adjoining properties.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

Comment: The proposal is considered reasonable with regards to privacy, with the exception of the kitchen window which may result in direct views between the two properties. In this regard, a condition of consent is recommended that obscure glazing is provided to the kitchen window on the western elevation to resolve privacy. The kitchen will still enjoy views to Newport Beach and sunlight access via the obscure window and clerestory window above.

As discussed in detail elsewhere within this report a reasonable outcome with regards to solar access is achieved notwithstanding the non-compliance, with solar access provided to the eastern facing windows at a level that would be experienced in a complying scheme.

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

Comment: No significant trees are proposed to be removed and the proposal has new landscape planting required as part of the conditions and landscape plan.

The proposed development is considered to achieve the outcomes of the Pittwater DCP and control and therefore, the variation is supported in this particular circumstance.

D10.13 Landscaped Area - Environmentally Sensitive Land

DCP Control

The DCP requires that 60% of the site is landscaped area. The DCP contains a variation clause that 6% of that area may consist of paved open space and outdoor verandahs, subject to the proposal

meeting the outcomes of the control.

The proposed development consists of 51.6% landscaped area or 57.6% when including the permitted variations.

Merit Consideration

Achieve the desired future character of the Locality. (S)

Comment: The proposal presents as a two storey building within a landscaped setting, which is consistent with the desired future character of the area. The building is well articulated and is consistent with the spatial proportions of surrounding dwellings within the vicinity of the site.

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

Comment: The building is well articulated and provides area of landscaping within the front and rear setback to allow opportunity for landscaping to mitigate the building bulk and scale.

A reasonable level of amenity and solar access is provided and maintained. (En, S)

Comment: The proposal results in the reasonable retention of privacy and solar access as discussed elsewhere within this report.

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

Comment: No significant locally native trees are removed as a result of the development and the Pine tree is retained in the southern setback area. Area is available for suitable landscape planting to assist in reducing the prominence of the built form and softening as viewed from the road.

Conservation of natural vegetation and biodiversity. (En)

Comment: Council's landscape officer supports the application and no significant canopy trees area removed as a result of the development.

Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)

Comment: Council's development engineers are satisfied with the method of stormwater disposal.

To preserve and enhance the rural and bushland character of the area. (En, S)

Comment: There are sufficient areas of deep soil in the front and rear setback area to allow medium and tall canopy trees to be planted to contribute to the landscape setting of the area.

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

Comment: Council's engineers are satisfied with the method of stormwater disposal and water management.

The proposed development achieves the outcomes of the control and therefore the variation to the control is supported in this particular circumstances.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$13,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,350,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2021/0556 for Demolition works and construction of a dwelling house, including swimming pool and garage on land at Lot 104 DP 752046, 39 Attunga Road, NEWPORT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A000 - Rev A	April 2021	MHDP Architects
A001 - Rev A	April 2021	MHDP Architects
A002 - Rev A	July 2021	MHDP Architects
A003 - Rev B	July 2021	MHDP Architects
A101 - Rev C	September 2021	MHDP Architects
A102 - Rev C	September 2021	MHDP Architects
A103 - Rev C	September 2021	MHDP Architects
A104 - Rev B	September 2021	MHDP Architects
A201 - Rev C	September 2021	MHDP Architects
A202 - Rev C	September 2021	MHDP Architects
A203 - Rev C	September 2021	MHDP Architects
A301 - Rev A	April 2021	MHDP Architects
A203 - Rev C	September 2021	MHDP Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
C01 - Issue A	16/04/2021	Development Engineering Solutions
C02 - Issue A	16/04/2021	Development Engineering Solutions

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Report, Ref 3243	2 March 2021	Bushfire Planning Services
Arborist Report	March 2021	Growing my way
Geotechnical Report, Ref J3243	5 March 2021	White Geotechnical Group
BASIX Certificate No.1179023S	17 March 2021	Ecoplus Consultants

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
A003 D - Landscape Concept Plan	September 2021	

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

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

2. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or

demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

3. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$13,500.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$1,350,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount

unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

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

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

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

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

5. **Security Bond**

A bond (determined from cost of works) of \$5,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 5 March 2021 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

7. **Traffic Management and Control**

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

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

8. **Amendments to the approved plans**

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

- The kitchen window on the western elevation shall consist of obscure glazing.

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

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

9. **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 Policy and generally in accordance with the concept drainage plans prepared by Development Engineering Solutions, drawing number 201201 C01 and C02 Rev A, dated 16.04.21. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

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

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

10. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

11. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

Reason: To facilitate suitable vehicular access to private property.

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 Certifying Authority prior to the issue of the Construction Certificate.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. Project Arborist

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

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

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

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

- i) section 5 Discussion: requiring tree trunk protection; below ground 'live root management' that minimises any Tree Protection Zone (TPZ) total surface area (203.08m²) intrusion relative to existing soil level; installation of a composted mulch maintained from prior to commencement until completion of the project at a minimum thickness of 75mm; a Tree Trunk Guard to be installed from ground level to 3.50m high so as to protect the tree trunk from works to form/build the swimming pool structure; and TPZ fencing,
- ii) attendance during excavation for retaining wall / stairs,
- iii) any required footing located within its TPZ radial distance (8.04m) must be designed to have the capacity to be flexibly located should any significant diameter ie. 50mm 'live root' be exposed,
- iv) final footing location/s must be inspected & documented in writing with supporting photographic evidence of any exposed significant diameter 'live root' not being compromised by the retained Project Arborist.

All tree protection measures specified must:

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

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

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. Tree and Vegetation Protection

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

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

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment titled Construction Impact & Management Statement.

The Certifying Authority must ensure that:

d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.

e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

15. **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 with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of trees.

16. **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.

17. **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 Certifying Authority.

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

18. **Traffic Control During Road Works**

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

Reason: Public Safety.

19. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.5 metres wide at the kerb to 4.5 metres wide at the boundary in accordance with Northern Beaches Council Drawing No A4-3330/7 ML and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

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

20. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan A003 issue C dated July 2021 inclusive of the following conditions:

i) the alignment of walling and stairs within the external areas shall be in accordance with A003 issue C,

ii) the nominated *Banksia integrifolia* tree planting shall be installed at a minimum 75 litre container size, located within a 9m² deep soil area wholly within the site and be located a minimum of 3 metres from existing and proposed buildings, and other trees,

iii) the nominated *Acmena smithii* 'hot flush' shall be planted at the nominated container size of

larger,

iv) all shrubs/accents shall be planted at a minimum 200mm container size, and all groundcovers shall be planted at a minimum 140mm container size.

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

Reason: Environmental amenity.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative

<https://5milliontrees.nsw.gov.au/>

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

Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Certifying Authority, assessing the health and impact to the Norfolk Island Pine required to be retained, including the following information:

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

Reason: Tree protection.

22. **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 on a copy of the approved drainage plan) and Hydraulic 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 over the on-site storm water disposal structures is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

24. **Swimming Pool Requirements**

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

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

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life (DACPLF09)

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

25. **Landscape Maintenance**

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

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

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

Reason: To maintain local environmental amenity.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Jordan Davies, Planner

The application is determined on 29/09/2021, under the delegated authority of:



Lashta Haidari, Acting Development Assessment Manager