

# STATEMENT OF ENVIRONMENTAL EFFECTS

Section 4.55 (2) Modification to DA 2020/1501 –  
approved by Northern Beaches Council on 7 May 2021  
for demolition works and construction of a dwelling  
house including secondary dwelling and swimming  
pool

UNDER THE  
*ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979*  
(AS AMENDED) AND *REGULATIONS 2000*



**PROPERTY:** 38 UNDERCLIFF ROAD, FRESHWATER NSW 2096  
(LOT 22, DP 5118)

**APPLICANT:** GREG CETINICH C/- TOMASY PLANNING

Prepared by:

**DENIS SMITH, PRINCIPAL**  
TOMASY PTY LTD  
Level 1, 1073 Pittwater Road  
Collaroy, NSW 2097

Phone: (02) 8456 4754  
Mobile: 0400-777-115  
e-mail: [denis.smith8@bigpond.com](mailto:denis.smith8@bigpond.com)

JULY 2021

## Document Information

Prepared by: Tomasy Planning Pty. Ltd.  
Author: Denis Smith  
Article Type: Statement of Environmental Effects  
Date: 20 July 2021

## Contact Information

Tomasy Planning Pty. Ltd.  
Suite 1 Level 1  
1073 Pittwater Road  
Collaroy NSW 2073

Telephone: +61 8456 4754  
Mobile: +61 400 777 115

## Document Control

Version	Date	Author	Author Initials	Reviewer	Reviewer Initials
1.00	13 July 2021	Denis Smith	DS	Robyn Smith	RS
2.00	20 July 2021	Denis Smith	DS	Robyn Smith	RS

Copyright in the whole and every part of this document belongs to Tomasy Planning Pty. Ltd. and may not be used, sold, transferred, copied or reproduced in whole or in part in any manner or form or in or on any media to any person other than by agreement with Tomasy Planning Pty. Ltd.

## TABLE OF CONTENTS

1	INTRODUCTION	4
2	BACKGROUND INFORMATION	5
3	SITE PROFILE	6
4	THE PROPOSAL	10
5	STATUTORY PROVISIONS FOR SECTION 4.55 MODIFICATION	16
6.	STATUTORY PLANNING CONTROLS	19
6.1	WARRINGAH LOCAL ENVIRONMENTAL PLAN	19
6.2	PRINCIPLE DEVELOPMENT STANDARDS WLEP2011	21
6.3	HEIGHT OF BUILDING	22
6.4	DEVELOPMENT ON SLOPING LAND	23
6.5	SECONDARY DWELLING PROVISIONS	24
6.6	WARRINGAH DEVELOPMENT CONTROL PLAN 2011	24
7	STATE ENVIRONMENTAL PLANNING POLICIES	33
8	OTHER MATTERS UNDER SECTION 4.15 OF THE <i>ENVIRONMENTAL PLANNING AND ASSESSMENT ACT NSW 1979</i>	35
8.1	MATTERS FOR CONSIDERATION – GENERAL	35
8.2	STATUTORY AND POLICY CONSIDERATIONS	35
8.3	LIKELY IMPACTS OF THE DEVELOPMENT (SECTION 4.15(1)(B)) AND SUITABILITY OF THE SITE (SECTION 4.15(1)(C))	35
8.4	SUBMISSIONS (SECTION 4.15(1)(D))	36
8.5	THE PUBLIC INTEREST (SECTION 4.15(1)(E))	36
9	CONCLUSIONS	37

## 1. INTRODUCTION

This report has been prepared as part of the supporting documentation for a Section 4.55(2) Modification to Development Application 2020/1501 for the following works at 38 Undercliff Road, Freshwater:

- Deletion of doors and windows to internal courtyard and the addition of operable skylight to roof above;
- Void to first floor and all other floors retained;
- No increase to useable floor space provided;
- Replacement of sliding doors with glass louvres to ground floor living dining area;
- Revised configuration of deck and pool area including deletion of the non-trafficable areas and replacement with landscaping useable deck areas.

This report has been prepared following instructions from the owner of the subject site. In preparing this document, consideration has been given to the following:

- *The Environmental Planning and Assessment Act, 1979, as Amended (EP&A Act);*
- *The Environmental Planning and Assessment Regulation;*
- *Warringah Local Environmental Plan 2011 (WLEP 2011);*
- *Warringah Development Control Plan (WDCP);*
- Survey Plan prepared by CMS Surveyors dated May 2020;
- Geotech Report prepared by Sydney Geotech Consultancy September 2020;
- Landscaping plans prepared by COS Design dated 12 July 2021;
- Waste Management Plan prepared by Arkhaus Architects;
- Notice of Determination for DA 2020/1501;
- Revised BASIX Certificate by Efficient Living dated July 21;
- Development Application Assessment Report;
- Northern Beaches Panel External Assessment Report;
- Landscaped Plans prepared by COS Design dated 12 July 2021;
- Architectural Drawings prepared by Arkhaus Architects:
  - DA.00: Coverage
  - DA.01: Site Analysis Plan
  - DA.02: Site Plan
  - DA.03: Garage Plan
  - DA.04: Ground Floor Plan
  - DA.05: Ground Floor Plan Rear
  - DA.06: First Floor Plan
  - DA.07: Roof Plan
  - DA.08: Streetscape

- DA.09: Elevations
- DA.10: Elevations
- DA.11: Elevations
- DA.12: Sections
- DA.13: Sections
- DA.14: Sections
- DA.15: Perspectives
- DA.16: Colours and Finishes Schedule
- DA.17: Shadow Diagrams
- DA.18: Shadow Diagrams
- DA.19: Shadow Diagrams
- DA.20: Waste Management Plan
- DA.21: GFA, DS, POS Calculations
- DA.22: Demolition Plan

## **2. BACKGROUND INFORMATION**

The subject site, 38 Undercliff Road, Freshwater (the site) currently comprises a very old, single detached residential dwelling. A development application DA2020/1501 was submitted to Council in November 2020 for demolition works and the construction of a dwelling including a secondary dwelling, swimming pool and associated landscaping. This application was the subject of an approval issued by the Development Assessment Panel which resulted in a Notice of Determination from Northern Beaches Council on 7 May 2021 by way of an approval subject to a number of conditions.

The owners of the site wish to modify the consent with most of the works associated with the modification being at the rear of the proposed dwelling which has a frontage to Moore Lane. The proposed works, the subject of this modification, are in character with the immediate precinct and do not result in any adverse impacts upon the existing built environment nor do they result in view loss to adjoining residential dwellings. The streetscape along Moore Lane will be substantially enhanced as a result of the subject application. The proposal represents a permissible land use and demonstrates consistency with the relevant Objectives of both WLEP2011 and WDCP 2011.

### 3. SITE PROFILE

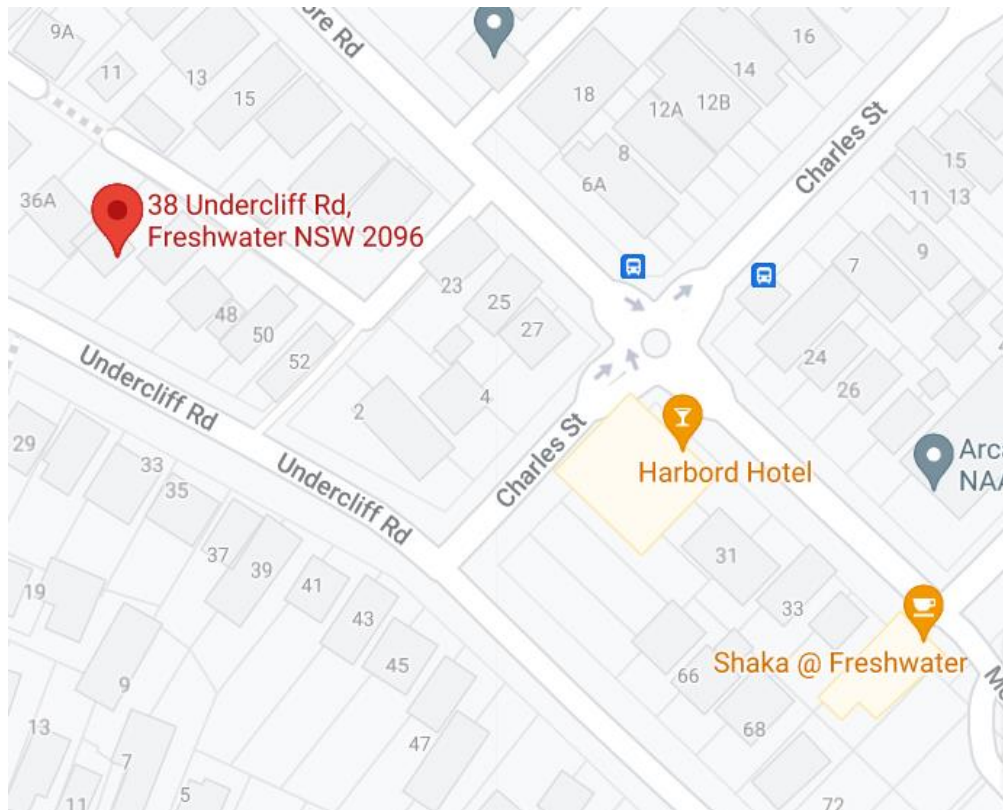
The existing premises are located on the eastern side of Undercliff Road, Queenscliff, and the property has a dual frontage, with the main frontage to Undercliff Road and a rear frontage to Moore Lane. The site is regular in shape with a frontage of 15.8sqm to Undercliff Road and 15.45m to Moore Lane. The average depth of the parcel of land is 37.5m with a site area of 576.7sqm.

The site slopes from the south-west to the north-east and includes a cross-fall of approximately 5m. This immediate precinct is characterised by one-, two- and three-storey dwelling houses and multi-dwelling housing developments.

#### Overview



Source: <https://maps.six.nsw.gov.au/>



Source: Google Maps 2021

It is important to acknowledge that the development immediately to the south-east of the site comprises a three-storey multi-unit development of significant height, bulk and scale with balconies that allow occupants to look directly into the subject property. A photograph of this development is shown below:



Tomasy photograph – June 21

Immediately to the north-west is a residential dwelling with a major structure erected at the rear with frontage to Moore Lane and a roof-top terrace. The owner of No. 38 is faced on the common boundary with a blank wall with a small section of oblique glazing glass bricks. A photograph demonstrating the height and scale of this structure is set out below:



Tomasy photograph – June 21

Please see photographs showing the rear section of the subject property to where most of the modification works relate:



Tomasy photograph – June 21



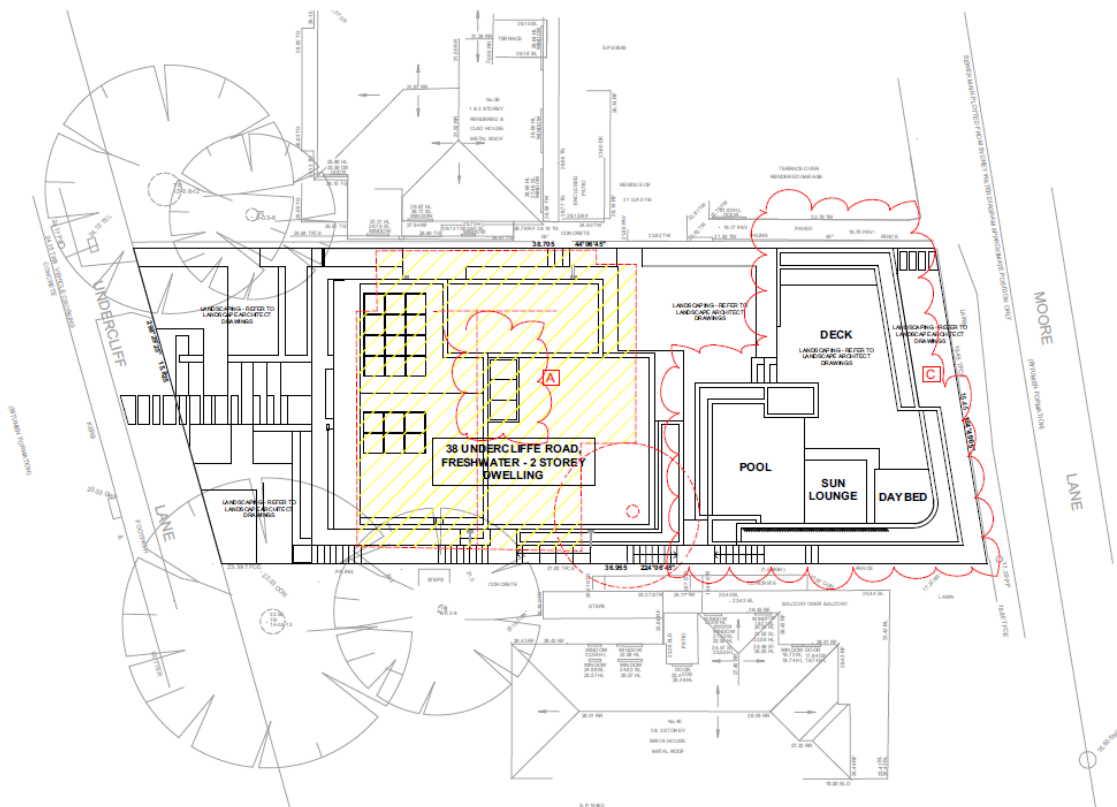
Tomasy photograph – June 21

#### 4. THE PROPOSAL

The modification in the main relates to works associated with the rear component of the approved development under DA2020/1501. The architectural drawings prepared by Arkhaus Architects describe the modification in terms of the following:

- Deletion of doors and windows to internal courtyard and the addition of operable skylight to roof above;
- Void to first floor and all other floors retained;
- No increase to useable floor space provided;
- Replacement of sliding doors with glass louvres to ground floor living dining area;
- Revised configuration of deck and pool area including deletion of the non-trafficable areas and replacement with landscaping useable deck areas.

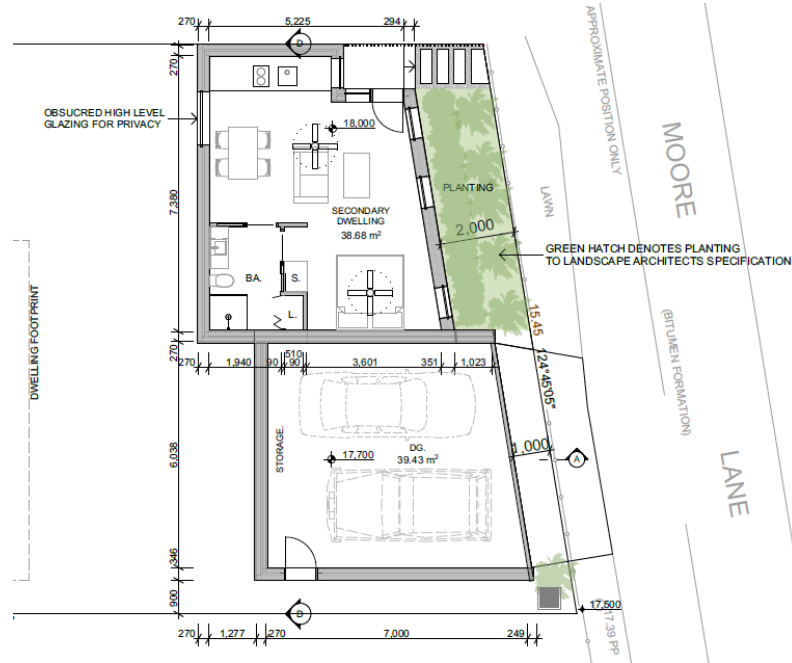
Architectural drawing DA02 identifies areas A and C which are the subject of the modification. An excerpt from the architectural set of plans for DA.02 is shown below:



Source: Drawing DA.02 – Arkhaus Architects

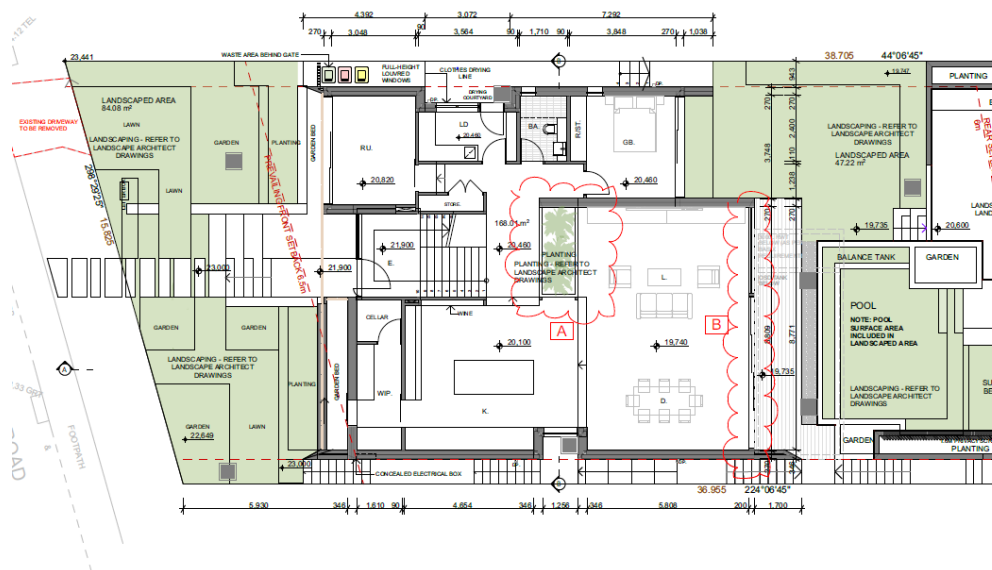
Section 4.55 (2) Modification to DA 2020/1501  
38 Undercliff Road, Freshwater

Drawing DA.03 shows a setback of 2m from Moore Lane to the secondary dwelling. This area is intended to be landscaped to enable a softening of the built form and to create an effective amenity for the occupants of the secondary dwelling while improving and enhancing the existing streetscape along Moore Lane which is dominated by driveways and garaging facilities.



Source: Drawing DA.03 – Arkhaus Architects

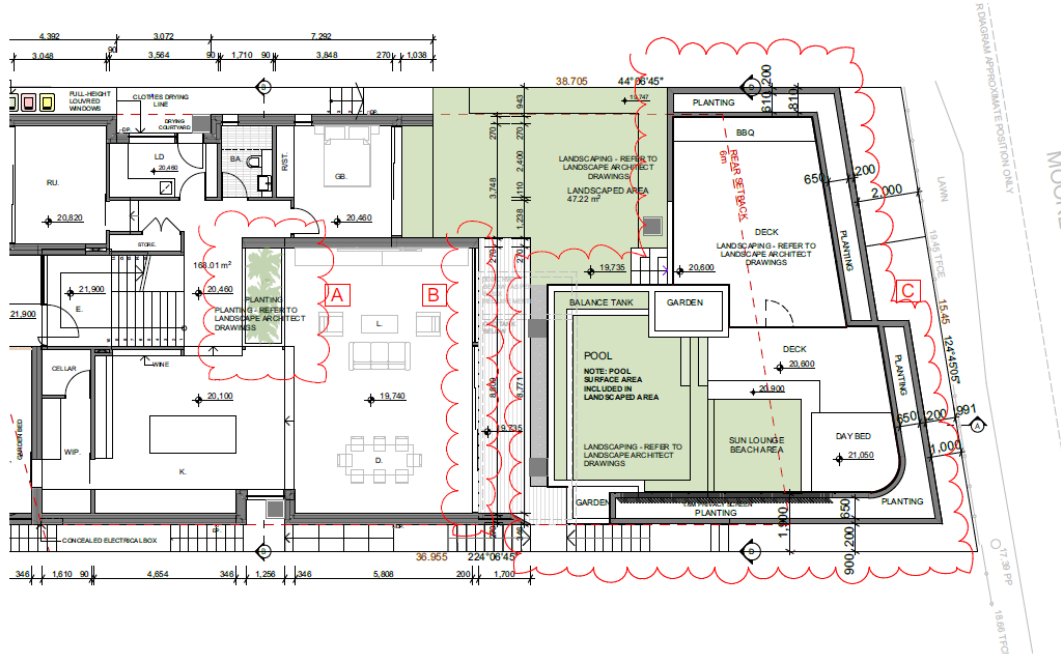
Drawing DA.04 defines Modifications A and B. “A” being deletion of doors and windows to the internal courtyard and the addition of operable skylight to the roof above. There is no increase in useable floor space. Item B is the replacement of sliding doors with glass louvres. This plan also shows the relationship between the private landscaped open space areas at the rear of the dwelling, the pool area and associated landscaping.



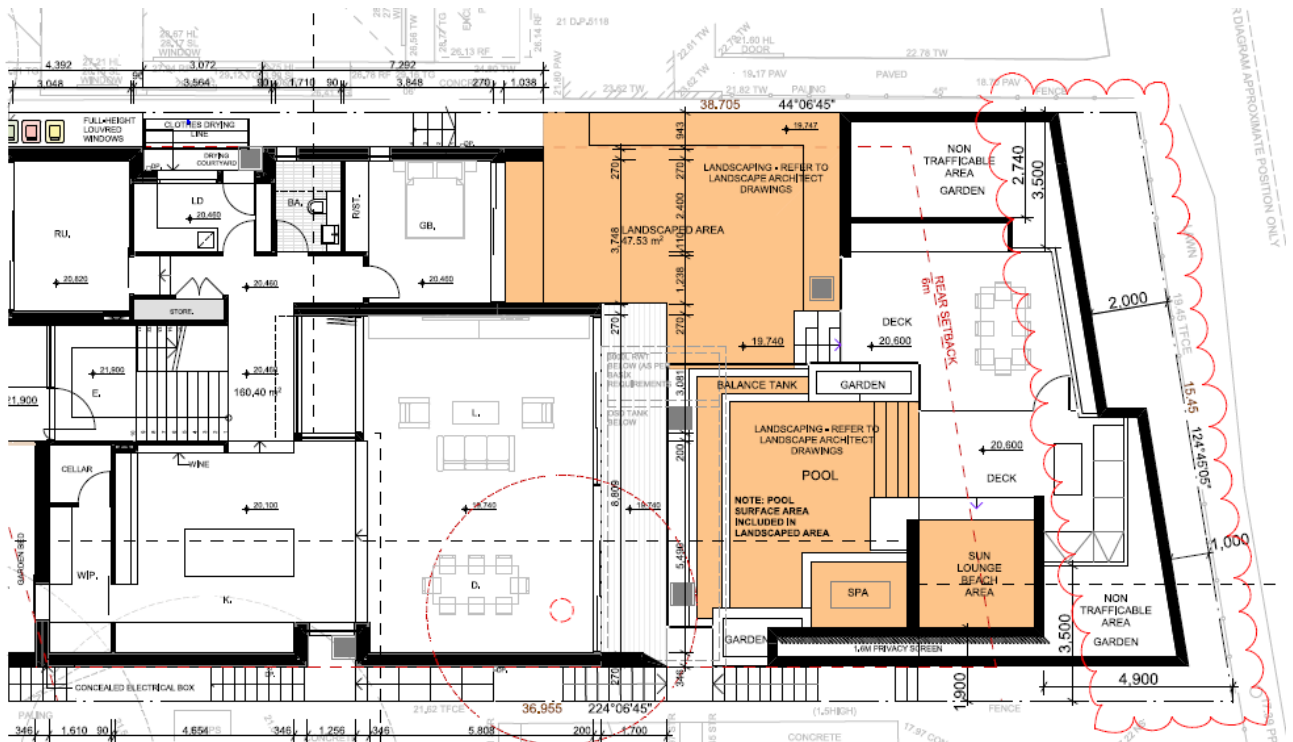
Source: Drawing DA.04 – Arkhaus Architects

Section 4.55 (2) Modification to DA 2020/1501  
38 Undercliff Road, Freshwater

Drawing DA.05 – Modifications A and B have already been described in the previous drawing. This drawing depicts the changes outlined by the letter C which includes the reconfiguration of the improved deck and pool area. The plans show a setback of 2m to a secondary dwelling with a proposed deck and associated landscaping by way of planting 650mm wide on the northern part of the deck and the eastern component of the deck. The modification also includes a reconfiguration of the approved deck area and sun lounge which will be situated on top of the carparking facilities on the lower level. These works involve the deletion of the non-trafficable areas and are replaced with landscaping and useable deck areas.



Source: Drawing DA.05 – Arkhaus Architects



DA Approved Stamped Plans – Northern Beaches Council





## Drawing DA.21 – Development Data

GFA BY STOREY	
STOREY	AREA
BASEMENT	38.68
GROUND FLOOR	168.01
FIRST FLOOR	104.23
	<b>310.92 m<sup>2</sup></b>

LANDSCAPE	
STOREY	AREA
BASEMENT	13.05
GROUND FLOOR	168.27
	<b>181.32 m<sup>2</sup></b>

PRIVATE OPEN SPACE	
STOREY	AREA
GROUND FLOOR	113.42
	<b>113.42 m<sup>2</sup></b>

Source: Drawing DA.21 – Arkhaus Architects

LEP & DCP	REQUIRED	PROPOSED	COMPLIANT
ZONING	R2	-	COMPLIANT
FSR	NONE STATED	0.5:1	COMPLIANT
HEIGHT	8.5m	8.2m	COMPLIANT
SITE AREA	576.7m <sup>2</sup>	-	
GROSS FLOOR AREA	NONE STATED	<b>310.92 m<sup>2</sup></b>	
SITE COVERAGE	33.3% x 576.7m <sup>2</sup> = 192.04	<b>187.98m<sup>2</sup></b>	COMPLIANT
LANDSCAPE AREA	40% of lot = 230.68m <sup>2</sup>	<b>182.24m<sup>2</sup></b>	
PRIVATE OPEN SPACE	60m <sup>2</sup>	<b>113.42 m<sup>2</sup></b>	COMPLIANT
<b>SETBACKS</b>			
<b>GROUND FLOOR SETBACKS</b>			
FRONT SETBACK	6.5m	6.5m	COMPLIANT
REAR SETBACK	6m	1M (DUAL ROAD)	MINT - PRECEDENCE
SIDE SETBACK	900mm	900mm	COMPLIANT
<b>FIRST FLOOR SETBACKS</b>			
FRONT SETBACK	6.5m	6.5m	COMPLIANT
REAR SETBACK	6m	Boundary	COMPLIANT
SIDE SETBACK	900mm	900mm	COMPLIANT

Source: Drawing DA.02 – Arkhaus Architects

**Note:** The plans approved under DA2020/1501 provided for 181.32sqm (31.5%) of landscaped open space. The modification provides for 181.32sqm (31.5%), which is identical to the approved landscape plan under DA2020/1501.

### Waste Management:

A revised Construction Waste Management Plan has been prepared by Arkhaus Architects detailing how waste will be moved from the site during construction including matters from such site actions, waste removal, materials handling, traffic management and occupational health and safety. Refer to the submitted waste management plan for further detail. The proposed waste management plan is suitable for the site.

### Stormwater:

There is no change to the approved stormwater management plans under DA2020/1501.

## **5 STATUTORY PROVISIONS FOR SECTION 4.55 MODIFICATION (cf previous S96)**

It is submitted that the proposed modification falls within the definition of a Section 4.55 Modification of Consents – generally, subsection (2);

- (1) **Modifications involving minor error, misdescription or miscalculation** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.

**Note—**

Section 380AA of the [Mining Act 1992](#) provides that an application for modification of development consent to mine for coal can only be made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.

- (1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—
- (a) it is satisfied that the proposed modification is of minimal environmental impact, and
  - (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
  - (c) it has notified the application in accordance with—
    - (i) the regulations, if the regulations so require, or
    - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
  - (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1), (2) and (5) do not apply to such a modification.

- (2) **Other modifications:** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
- (c) it has notified the application in accordance with—
  - (i) the regulations, if the regulations so require, or

- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.**

**Subsections (1) and (1A) do not apply to such a modification.**

Source: EP&A Act 1979, Section 4.55

The proposed modifications as described in Section 4, The Proposal, principally relate to works associated with rear component of the building and in particular the deletion of the non-trafficable areas on the approved plans and the replacement with useable deck areas and perimeter landscaping. Other works involve changes to glazing arrangements to the living and dining room area which do not have any adverse impacts on the amenity of the area or privacy impacts.

Therefore, the changes proposed to the approved residential dwelling, secondary dwelling and associated landscaping under DA2020/1501 do not constitute a substantial change to the development as consented, or to such a degree that it would not be considered substantially the same development. The modifications, as submitted, have been reviewed and it is concluded that these modifications are acceptable and do not result in any significant adverse impacts upon the amenity or privacy of the neighbourhood, nor significantly change the development as approved and notified to the public previously.

In support of this position, due consideration has been given to numerous decisions made by the NSW Land and Environment Court and by the NSW Court of Appeal involving applications made pursuant to Section 4.55 of the EP&A Act. In this regard, particular reference is made to the *City of Sydney vs Ilenace Pty Ltd (1984) 3 NSWLR 414* and *Moto Projects (No 2) Pty Ltd vs North Sydney Council (1999) 106 LGERA 298*. In both these cases, it was established that the proposed modification would result in a building or development that would be “essentially or materially” the same as the currently approved development.

This position has been further reinforced by the Land and Environment Court of New South Wales, which has held that the question of **substantially the same** means ‘essentially or materially of having the same essence’ (*Talbot J in Wolgon Action Group Incorporated versus Lithgow City Council in 2001* and *Pearlman J in Schrodgers Australia Property Management Pty Ltd versus Shoalhaven City Council and Anor 1999*).

A number of other cases have also been reviewed as part of the qualitative assessment of the application and it is submitted that the development the subject of this application is substantially the same as previously approved. The essential components of the principal end land use (i.e. a residential dwelling, secondary dwelling, swimming pool and landscaped areas) and physical characteristics of the approved dwelling are not significantly altered as a consequence of the proposed modification (i.e building scale, materials, presentation to Undercliff Road or Moore Lane when viewed from a public place).

It is therefore submitted that the following outcomes are relevant to this proposed modification:

- This application for modification of a development consent does not significantly alter the external appearance or built form of the subject premises to any degree that it would represent a building of a different urban design to the approved development.
- The built form outcome is indistinguishable in terms of overall bulk, scale and appearance of the development that has been previously approved.
- The amenity and streetscape outcomes of the original development consent are retained with no adverse impacts from the amendments in terms of amenity for privacy or visual impacts.
- The development does not give rise to any adverse impacts associated with views from the adjoining development noting that the developments to the north-east in Moore Lane are lower than the subject site and the building to the south comprises a three storey building which overlooks the subject property. The same applies to the building to the north-west of the subject site and, in particular, the structure that is located near the Moore Lane alignment.
- The use of the land will remain for the purpose of a residential dwelling (including a secondary dwelling) as approved by Council on 7 May 2021 under DA2020/1501.

The modification does not alter the merit-based assessment that generated the approval granted by Northern Beaches Council on 7 May 2020. The approval, if modified, will retain the essence of the original consent and is therefore considered to fall within the relevant tests for Section 4.55 of The Act.

The application meets the requirements of a Section 4.55 (2) Modification and, therefore, the consent authority can consider and grant consent to the application on the basis that the development will remain substantially the same as that originally approved by Northern Beaches Council.

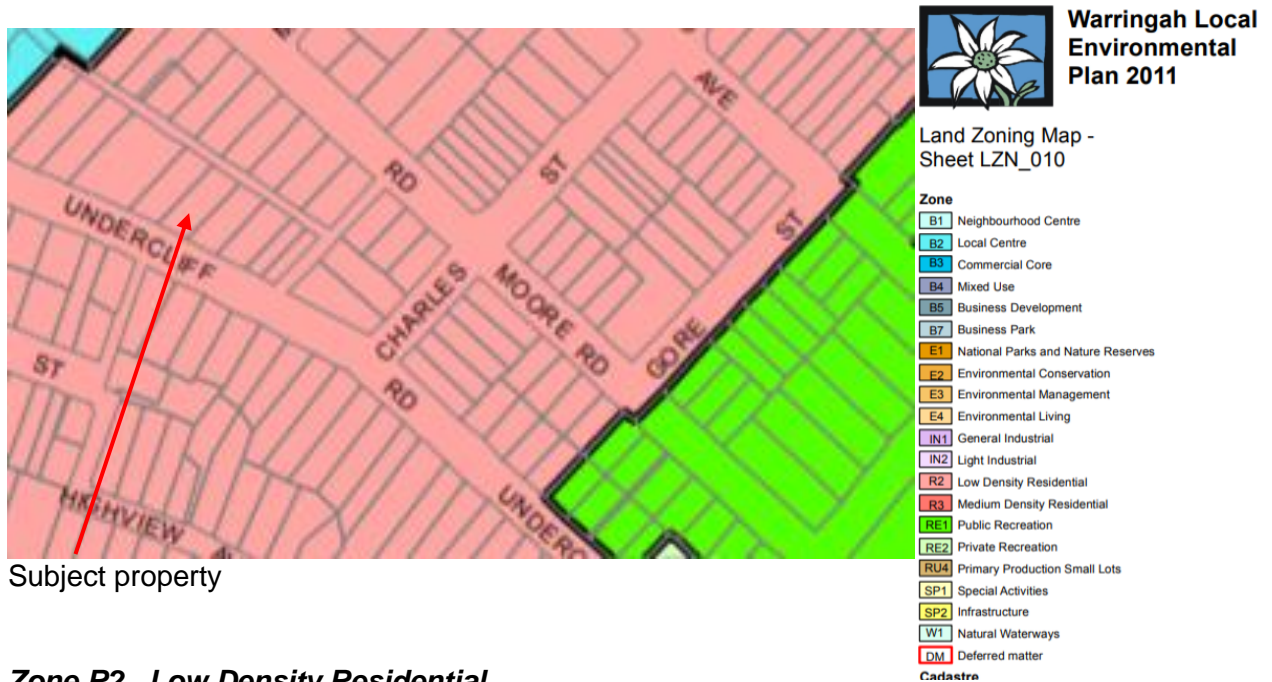
## 6. STATUTORY PLANNING CONTROLS

### 6.1 Warringah Local Environment Plan 2011

The proposed development is permissible under WLEP2011 with the consent of Council. An assessment against the relevant Provisions of WLEP2011 has been undertaken below:

#### Zoning – R2 Low Density Residential

The subject site is zoned R2 Low Density Residential (see zoning map excerpt below).



Subject property

#### Zone R2 Low Density Residential

##### 1 Objectives of zone

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

##### 2 Permitted without consent

Home-based child care; Home occupations

##### 3 Permitted with consent

Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Child care centres; Community facilities; **Dwelling houses**; Educational establishments; Emergency services facilities; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home

*businesses; Hospitals; Places of public worship; Recreation areas; Respite day care centres; Roads; Veterinary hospitals*

#### **4 Prohibited**

*Any development not specified in item 2 or 3*

Source: Warringah Local Environment Plan 2011

**Dwelling house** means a building containing only one dwelling.

**Note.** Dwelling houses are a type of **residential accommodation**—see the definition of that term in this Dictionary.

**Residential accommodation** means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) Attached dwellings,
- (b) Boarding houses,
- (c) Dual occupancies,
- (d) Dwelling houses,
- (e) Group homes,
- (f) Hostels,
- (g) Multi dwelling housing,
- (h) Residential flat buildings,
- (i) Rural workers' dwellings,
- (j) Secondary dwellings,
- (k) Semi-detached dwellings,
- (l) Seniors housing,
- (m) Shop top housing,

*but does not include tourist and visitor accommodation or caravan parks.*

**secondary dwelling** means a self-contained dwelling that—

- (a) is established in conjunction with another dwelling (the **principal dwelling**), and
- (b) is on the same lot of land as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling.

**Note—**

See clause 5.4 for controls relating to the total floor area of secondary dwellings.

Secondary dwellings are a type of **residential accommodation**—see the definition of that term in this Dictionary.

#### **Comment:**

The proposed uses are defined as a 'dwelling house' and 'secondary dwelling' – both a permissible use with Council consent within the R2 Low Density Residential zone. The proposal involves minor modifications to the approved dwelling, secondary dwelling, landscaping and the pool area approved under DA2020/1501 and is consistent with the Objectives of the R2 Low Density Residential zone.

The proposal does not result in the removal of any significant vegetation and the proposed minor works to the glazing and reconfiguration of the pool area do not result in any adverse impacts associated with bulk, scale or height that could detrimentally impact upon neighbouring properties.

## 6.2 Principal Development Standards WLEP 2011

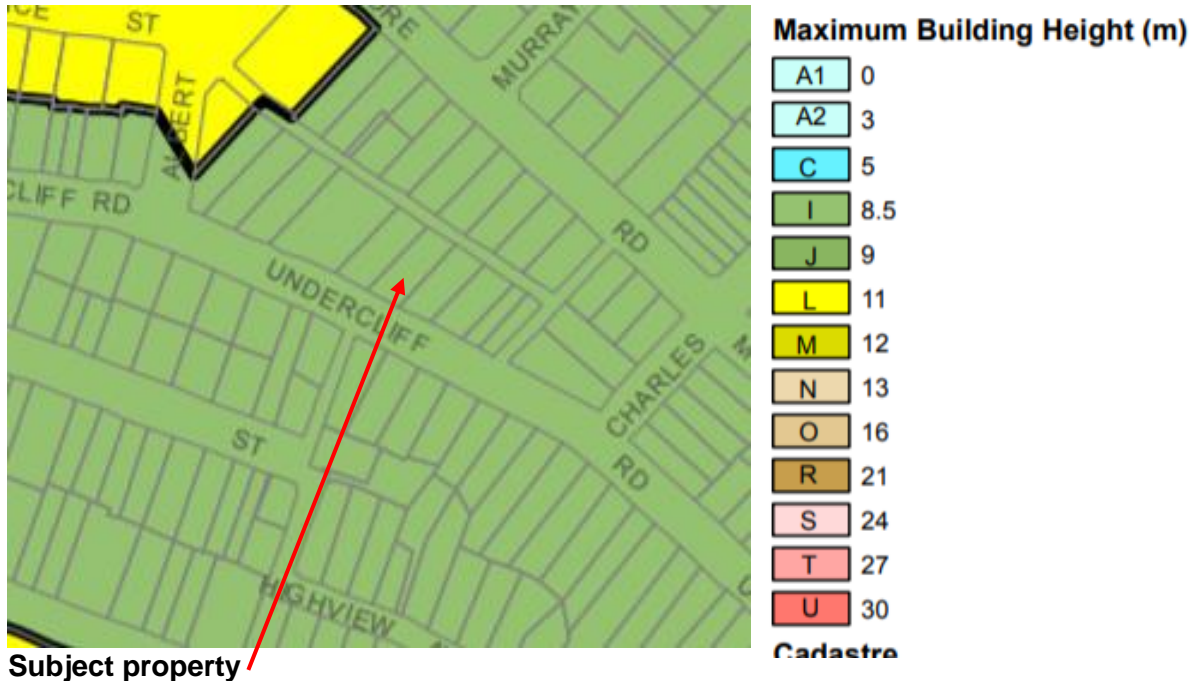
Part 4: Principal Development Standards			
Standard	Permitted	Proposed	Comment
4.1 Minimum subdivision lot size	N/A	N/A	N/A
4.2 Rural subdivision	N/A	N/A	N/A
4.2A Strata - Community Title Subdivision	N/A	N/A	N/A
4.3 Height of Buildings	8.5m	NA	No changes to existing building height approved.

Part 5: Miscellaneous Provisions	
Provision	Comment
5.1 Relevant acquisition authority	Not applicable
5.2 Classification and reclassification of public land	Not applicable
5.3 Development near zone boundaries	Not applicable
5.4 Controls relating to miscellaneous permissible uses	Not applicable
5.5 Development within the coastal zone	Not applicable
5.7 Development below mean high water mark	Not applicable
5.8 Conversion of fire alarms	Not applicable
5.9 Preservation of trees or vegetation	Not applicable
5.9AA Trees of vegetation not prescribed by a development control plan	Not applicable
5.10 Heritage conservation	Not applicable
5.11 Bush fire hazard reduction	Not applicable
5.12 Infrastructure development and use of existing buildings of the Crown	Not applicable
5.13 Eco-tourist facilities	Not applicable

Part 6: Relevant Additional Local Provisions	
Provision	Comment
6.1 Acid Sulfate Soils	Not applicable
6.2 Earthworks	Not applicable
6.3 Flood planning	Not applicable
6.4 Development on sloping land	A Geotech study was previously prepared by Sydney Geotech Consultancy dated September 2020.
6.5 Coastal hazards	Not applicable
6.6 Erection of dwelling houses in zone E3	Not applicable
6.7 Residential Flat Buildings in Zone B4 Mixed Use	Not applicable
6.8 Subdivision of Certain Land	Not applicable
6.9 Location of Sex Service Premises	Not applicable

Relevant Schedules	
Schedule	Comment
Schedule 1 Additional Permitted Uses	Not applicable
Schedule 2 Exempt Development	Not applicable
Schedule 3 Complying Development	Not applicable
Schedule 4 Classification and reclassification of public land	Not applicable
Schedule 5 Environmental Heritage	Not applicable
Other Relevant WLEP 2011 Clauses	
N/A	

### 6.3 Height of Buildings



Clause 4.3 Height of Building is set out below:

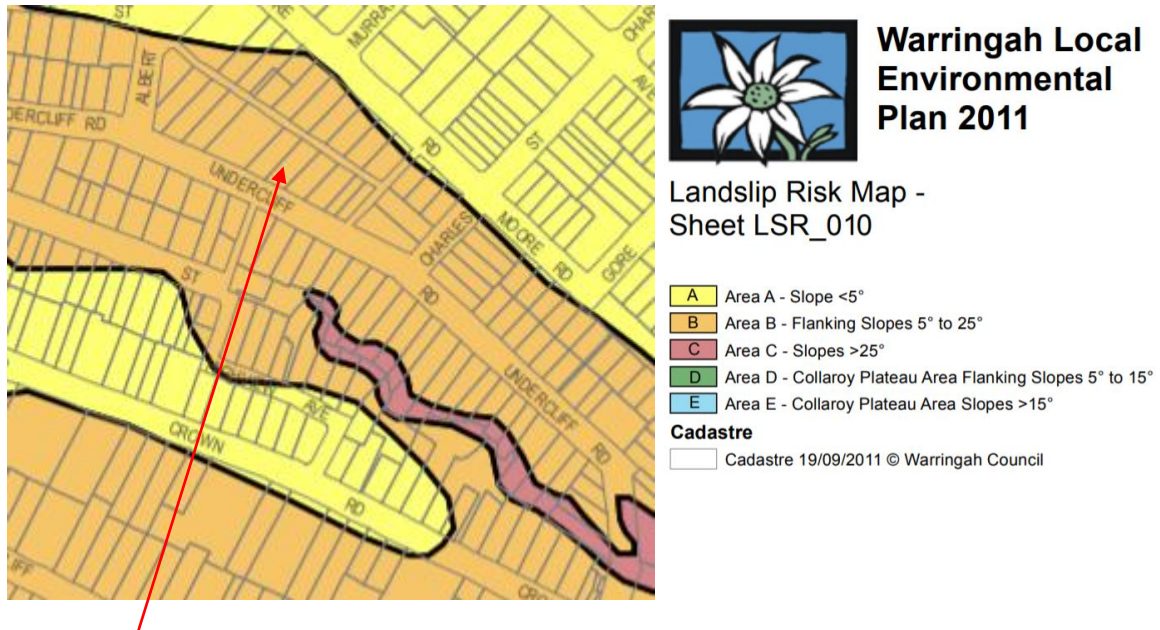
#### 4.3 Height of buildings

- (1) *The objectives of this clause are as follows:*
  - (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
  - (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
  - (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
  - (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*
- (2A) *If the Height of Buildings Map specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.*

**Comment: The modification does not result in any breach in the height of buildings as prescribed under WLEP2011.**

## 6.4 Development on Sloping Land

The site is identified as land within Land Slip Risk Area B (see WLEP excerpt below).



Subject property

The Objectives of Clause 6.4 seek to:

- *Avoid significant adverse impacts on development and on properties in the vicinity of development sites resulting from landslides originating either on or near sloping land;*
- *Ensure the impacts of storm water runoff from development or near sloping land are minimised so as to not adversely affect the stability of the subject and surrounding land;*
- *To ensure subsurface flows are not adversely affected by development so as to not impact on the stability or existing or adjoining land.*

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

- The application for development has been assessed for the risk associated with landslides in relation to both property and life, and*
- the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*
- The development will not impact on or affect the existing subsurface flow conditions.*

A geotechnical assessment was prepared as supporting documentation to the original DA 2020/1501 by Sydney Geotech Consultancy dated 2020. The modifications do not give rise to any geotechnical issues.

## 6.5 Secondary Dwelling Provisions (Clause 6.10 WLEP)

### 6.10 Development for the purposes of secondary dwellings in Zones R2 and R3

- (1) The objective of this clause is to ensure that secondary dwellings on land to which this clause applies are of low impact and without adverse effects on the specific ecological, social and aesthetic values of the land.
- (2) This clause applies to land in the following zones—
  - (a) Zone R2 Low Density Residential,
  - (b) Zone R3 Medium Density Residential.
- (3) Despite clause 5.4(9), development consent may be granted for development for the purposes of a secondary dwelling on land to which this clause applies if—
  - (a) the total floor area of the secondary dwelling does not exceed 75 square metres, and
  - (b) the consent authority is satisfied that the secondary dwelling will be located entirely within an existing principal dwelling that contains no other secondary dwelling.
- (4) In this clause—

**development for the purposes of a secondary dwelling** includes the following—

  - (a) the erection of, or alterations or additions to, a secondary dwelling,
  - (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

**Note—** See also Division 2 of Part 2 of [State Environmental Planning Policy \(Affordable Rental Housing\) 2009](#).

**Comment:** There are no changes to the approved secondary dwelling in relation to size or built form as approved under DA2020/1501.

## 6.6 WARRINGAH DEVELOPMENT CONTROL PLAN

In preparing this application, consideration has been given to Warringah Development Control Plan 2011 (WDCP2011). Accordingly, an assessment against the relevant Controls has been undertaken below.

### Part B - Built Form Controls

It is proposed to provide alteration and additions to an existing dwelling house and site in Freshwater. An assessment against the relevant built form controls identified in Part B of the WDCP2011 (Built Form Controls) has been undertaken as follows:

Control	Required	Proposed	Complies
<b>B1 Wall Height</b>	Maximum 7.2m	NA	No change to the approved building envelope as a result of the modification.
<b>B2 Number of Storeys</b>	Not applicable	N/A	N/A

Control	Required	Proposed	Complies
<b>B3 Side Boundary Envelope</b>	5m	The modification does not result in any changes to the approved building envelopment as per DA 2020/1501.	No changes to the approved side boundary envelopment.
<b>B4 Site Coverage</b>	Not applicable	Not applicable	Not applicable
<b>B5 Side Boundary Setbacks</b>	Minimum 0.9m south  0.9m for north	0.9m for the dwelling house and garage complies.  0m for secondary dwelling  0.9m for the dwelling house	Yes  No; however, there is no change to the approved setback.  Yes - complies
<b>B7 Front Boundary Setbacks</b>	Primary frontage 6.5m  Secondary frontage – 3.5m	Dwelling house 4.5m to 8.5m  Garage – 1m  Secondary dwelling – 2m	No change to the approved setback.  No change to the approved setback.  This represents an increase in the approved setback as per the panel's requirements.
<b>B11 Foreshore Building Setback</b>	Not applicable	Not applicable	Not applicable
<b>B12 National Parks Setback</b>	Not applicable	Not applicable	Not applicable
<b>B13 Coastal Cliffs Setback</b>	Not applicable	Not applicable	Not applicable
<b>B14 Main Roads Setback</b>	Not applicable	Not applicable	Not applicable

## Part C – Siting Factors

### C1 Subdivision

Not applicable

## **C2 and C3 – Parking Facilities and Traffic Access and Safety**

No changes to the approved car parking facilities which have access off Moore Lane.

## **C4 Stormwater**

Refer to the stormwater management plans prepared by ING Consulting Engineers dated August 2020 as submitted with DA 2020/1501.

## **C5 Erosion and Sedimentation**

Refer to the erosion and sedimentation control plans prepared by ING Consulting Engineers dated August 2020 as submitted with DA 2020/1501. The proposed modification will not result in any additional sedimentation or erosion impacts.

## **C6 Building over or adjacent to Constructed Council Drainage Easements**

There are no changes to the existing drainage infrastructure.

## **C7 Excavation and Landfill**

Excavation works will be as per the approved DA 2020/1501, no changes as a result of the modification.

## **C8 Demolition and Construction**

An amended Waste Management Plan has been prepared by Arkhaus Architects.

## **C9 Waste Management**

Please refer to the amended waste management plan prepared by Arkhaus Architects.

## **Part D - Design**

### **D1 LANDSCAPED OPEN SPACE AND BUSHLAND SETTING**

#### **Objectives:**

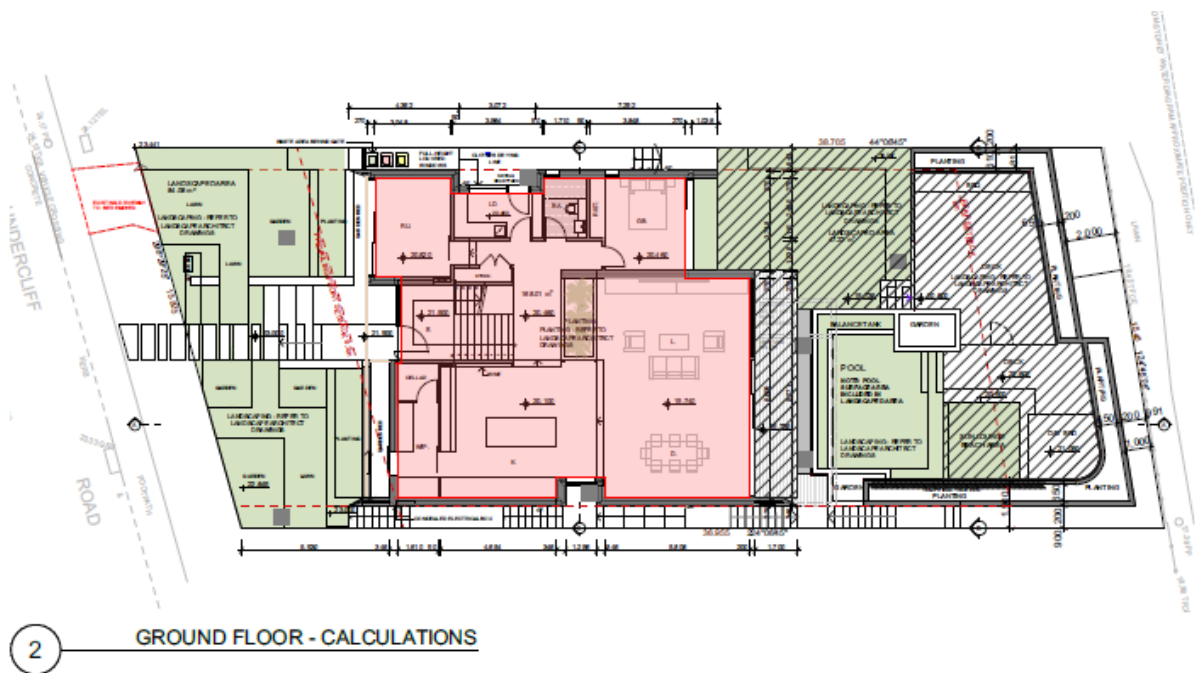
- *To enable planting to maintain and enhance the streetscape.*
- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*
- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low-lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*
- *To enhance privacy between buildings.*
- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*
- *To provide space for service functions, including clothes drying.*
- *To facilitate water management, including on-site detention and infiltration of stormwater.*

**Comment:** In the assessment officer's report that dealt with DA 2020/1501, the requirement under the DCP for Landscaped Open space is 40% (230.68sqm). The DA 2020/1501 was approved with 31.5% (181.32sqm). The proposed modification is 181.32sqm, which is identical to the same percentage of landscaping as approved under DA 2020/1501.

Set out on the following page is an excerpt from the landscape plan prepared by COS Design – Landscape Architects.

[illegible]

Page 27 of 37



**Comment:** The modification retains the same percentage of landscaping as originally approved under DA2020/1501. The secondary dwelling set back from Moore Lane by 2m, as per the approved development, allows the landscaped area at the front of the secondary dwelling to be effectively landscaped and provides enhanced amenity for the occupants of the secondary dwelling and an improvement of the streetscape along Moore Lane, which is at present devoid of any effective landscaping.

The landscaped area, as approved, has dimensions that are sufficient to enable the establishment of low-lying shrubs and medium-high shrubs which will form an integral component of the overall design of the development. The development, by way of the landscaped areas, is adequate to accommodate outdoor recreational opportunities that meet the needs of the occupants and provides adequate space for service functions including clothes drying.

## D2 Private Open Space

The proposed modification will significantly improve the useable private open space directly accessible from the principal living and dining area on the ground floor. The proposal will provide adequate areas for relaxation, recreation and will enhance the lifestyle of the occupants. The location of the decked area above the secondary dwelling for private recreation purposes has been designed with the provision of planting around the perimeter of the northern and eastern boundary.

It is important for Council to appreciate that the northern boundary of this deck area abuts a large blank wall of the adjoining residence and therefore the use of this area for private recreation purposes does not result in any adverse impact upon the neighbouring property to the north or properties located on the eastern side of Moore Lane. Properties on the eastern side of Moore Lane are dominated by garages, driveways or other parking facilities.

The two photographs below clearly demonstrate that the use of the decked area on the top of the secondary dwelling will not have any adverse privacy or visual impacts on adjoining developments or developments on the other side of Moore Lane.



Source: Tomasy Planning – photograph June 21



Source: Tomasy Planning – photograph June 21

### **D3 Noise**

In respect to the modification, reference is made to the comments listed under D2 Private Open Space. The modification relates, in the main, to the use of the decked area above the secondary dwelling for private recreation purposes as opposed to a non-trafficable area. It is submitted that the use of this area is an ideal place for the occupants to enjoy private recreation and relaxation as it abuts a wall of the adjoining residential dwelling of significant height, bulk and scale with a terrace on top of the existing structure. The modification does not change the overall height of the decked area as approved under DA2020/1501 and is considered to be sited in such a way having regard to the existing built form of the structure that abuts this component of the modification that there will not be any adverse impacts upon the adjoining neighbour by the way of emission of noise associated with private recreational use of an area which has been ideally planned for this purpose. To have this area as a non-trafficable area is impractical and without any demonstrated evidence from Council that this cannot be used for private recreation purposes associated with the main residence on the subject land.

### **D4 Electromagnetic Radiation**

Not applicable – no phone towers, transmitters or antennas proposed.

### **D5 Orientation and Energy Efficiency**

Not applicable.

### **D6 Access to Sunlight**

The proposed modification does not in any way result in an increase in overshadowing or solar impact on the adjoining residential property to the north. There is no change in the built form associated with this component of the modification.

### **D7 Views**

Due to the nature of the modification and having regard to the approved built form, as approved under DA2020/1501, it is submitted that there is no requirement to undertake a view analysis in accordance with the NSW Land and Court principles as set out in *Tenacity Vs Warringah Council*. This is reinforced by the fact that the land slopes steeply from Undercliff Road to Moore Lane and the development has been stepped down the site and overlooks other developments to the east of Moore Lane with single-storey development along the frontage of Moore Lane.

### **D8 Privacy**

Refer to comments under D2 and D3.

### **D9 Building Bulk**

There is no change to the approved building height, mass and scale of the development as approved under DA2020/1501. Furthermore, the architectural merits of the building have been enhanced with additional landscaping along Moore Lane in front of the proposed secondary dwelling.

### **D10 Building Colours and Materials**

No change to the Materials Schedule as submitted with the approved DA.

### **D11 Roofs**

Refer to comments under D10 above.

**D12 Glare and Reflection**

The proposed development will not result in overspill or glare from artificial illumination or sun reflection.

**D16 Swimming Pools**

The modification does not result in any significant change in the location, shape or size of the pool as approved under DA2020/1501.

**D21 Provision and Location of Utility Services**

All relevant services are available to the site such as water, sewer, electricity, and communications.

**D22 Conservation of Energy and Water**

Refer to the amended BASIX Certificate.

**Part E – The Natural Environment**

Not applicable.

**E1 Private Property Tree Management**

The modification does not involve the removal of any trees or significant vegetation.

**E2 Prescribed Vegetation**

Not applicable.

**E3 Threatened Species, Populations, Ecological Communities Listed Under State or Commonwealth Legislation, or High Conservation Habitat**

Not applicable.

**E4 Wildlife Corridors**

Not applicable.

**E5 Native Vegetation**

Not applicable.

**E6 Retention of Unique Environmental Features:**

Not applicable.

**E7 Development on Land Adjoining Public Open Space**

Not applicable.

**E8 Waterways and Riparian Lands**

Not applicable.

**E9 Coastline Hazard**

Not applicable.

**E10 Landslip Risk**

The proposal does not represent a landslip risk and is consistent with the requirements of WDCP2011.

**E11 Flood Prone Land**

Not applicable.

**Part F – Zones and Sensitive Areas**

Not applicable.

**Part G – Special Area Controls**

Not applicable.

## **7 STATE ENVIRONMENTAL PLANNING POLICIES**

### **7.1 State Environmental Planning Policy No. 55 – Remediation of Land**

State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land is applicable to all land within NSW and aims to promote the remediation of contaminated land and to reduce risk of harm to human health and the environment.

The land to which this modification relates comprises an existing dwelling house with a development approval for the demolition and construction of a new residence with a secondary dwelling. The land has been used for residential purposes for many decades and Council has already approved demolition and construction of the new dwelling and secondary dwelling and accordingly this modification falls within the same umbrella and there is no requirement to undertake further studies under SEPP No. 55.

### **7.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The SEPP Building Sustainability Index (BASIX) 2004 is applicable to the subject site. Clause 6 of the SEPP Provisions prescribe that the proposal is deemed to be a 'BASIX affected development' under the *Environmental Planning and Assessment Act 1979* and a BASIX certificate is required to accompany any prospective Development Application or modification for proposed works.

An amended BASIX Certificate has been prepared which indicates that the proposed development will satisfy the relevant water and energy reducing targets.

### **7.3 State Environmental Planning Policy (Infrastructure) 2007**

This application does not require a referral to the electricity supply authority as the proposal is not affected by any of the defined clauses within the SEPP.

### **7.4 State Environmental Planning Policy (Coastal Management) 2018**

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

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

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

**Comment: The development is located partially within the Coastal Environment Area. The development will not result in any adverse impact on the items within (1)(a)-(g).**

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

**Comment: The proposed development will not adversely impact the environmental and cultural values of the 'Coastal Environment Area'.**

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: The development will not cause an increased risk of coastal hazards on the site or other land. As such, it is considered that the application does comply with the Requirements of the State Environmental Planning Policy (Coastal Management) 2018.**

## **7.5 State Environmental Planning Policy (Affordable Rental Housing) 2009**

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

**Comment: The Modification includes the approved secondary dwelling and Council, in determining DA 2020/1501, agreed that the subject proposal involving the secondary dwelling demonstrates consistency with the requirements of this SEPP.**

## **8. Other Matters under part 4, Division 4.3 of the *Environmental Planning and Assessment Act, 1979***

### **8.1 Evaluation 4.15 (1) Matters for Consideration - General**

In determining a Development Application, a Consent Authority should take into consideration such of the following matters as are relevant to the development, the subject of the Development Application:

- (a) the provisions of:
  - (i) any draft environmental planning instrument;
  - (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority;
  - (iii) any development control plan;
  - (iv) any matters prescribed by the regulations that apply to the land to which the development application relates.
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality;
- (c) the suitability of the site for the development;
- (d) any submission made in accordance with the Act or the regulations;
- (e) the public interest.

The relevant issues are addressed in broad terms below:

### **8.2 Statutory and Policy Considerations**

The modification is considered to be consistent with the fundamental objectives and provisions of the governing instruments and, accordingly, the modification represents a development type and use facilitated by such instruments.

The modification is predominantly consistent with the relevant guidelines identified in the WDCP2011 in regard to built form and the natural environment. In addition to the above, the proposal also represents a permissible land use under WLEP2011.

Furthermore, the modification is consistent with the development approved under DA 2020/1501.

### **8.3 Likely Impacts of the Development (Section 4.15 (1) (b) and Suitability of the Site (Section 4.15 (1) (c))**

#### **The Character, Siting, Design and External Appearance of the Development; Relationship to Adjoining Land; Suitability of the Site**

The modification seeks approval for the following works:

- Deletion of doors and windows to internal courtyard and the addition of operable skylight to roof above;

- Void to first floor and all other floors retained;
- No increase to useable floor space provided;
- Replacement of sliding doors with glass louvres to ground floor living dining area;
- Revised configuration of deck and pool area including deletion of the non-trafficable areas and replacement with landscaping useable deck areas.

The items described above represent works of a minor nature and principally relate to the revised configuration of the approved deck and pool area with the deletion of the non-trafficable areas and replacement with landscaping and usable deck areas.

The modification represents a development with minimal environmental impacts on both the natural and built environments. The proposal will have no adverse social impacts on the surrounding area and has been skilfully designed to positively relate to the surrounding locality including landscape and pool setting being accessible from the private living area. The proposal will not alter the character of the area and is considered compatible with other developments within the proximity.

The proposed changes to the deck area to be used for private recreation purposes represent a sound and practical use of this area and will not result in adverse impacts on the amenity of the adjoining residence to the north or to development east of Moore Lane.

The proposed modifications will have negligible impact on surrounding neighbours particularly regarding views, privacy and noise. Negligible negative impacts on the future amenity of neighbourhood are envisaged and, as such, the proposal is suitable for the subject site and should be supported by Council.

#### **8.4 Submissions (Section 4.15(1) (d))**

No submissions are available at this time.

#### **8.5 The Public Interest (Section 4.15(1) (e))**

The proposed modifications will not have any adverse impact on the environment and the existing amenity of both Undercliff Road and Moore Lane will be maintained. The development has been skilfully planned, having due regard to the amenity of adjoining neighbours, and to the existing streetscape (Moore Lane) and configuration of surrounding residential developments and the built environment along Moore Lane.

The built form modifications are minor and generally unnoticeable in the context of the locality and would be considered as virtually the same as approved under DA2020/1501.

## 9. CONCLUSIONS

- The merits of the proposal have been assessed in accordance with the Provisions of the relevant clauses of WLEP2011 and the Provisions of Part 4, Section 4.15 of the *Environmental Planning and Assessment Act, 1979 (as amended)*.
- The proposed modification to Development Consent DA2020/1501 falls within a category of Section 4.55 (2) Modification of the EP&A Act in that it is a modification that is substantially the same development as that for which the consent was originally granted under DA 2020/1501.
- The proposed modification works at 38 Undercliff Road, Freshwater, are permissible with consent under the WLEP2011 and considered to be consistent with relevant Objectives of both the WLEP2011 and WDCP2011.
- The proposed modifications will have no environmental impact, and there will be no adverse impact on the surrounding area in terms of amenity or privacy.
- The proposed modifications will contribute to an exceptionally high standard of residential amenity for future occupants in terms of usable private open space, privacy and outdoor setting.
- Accordingly, the application for modification of DA2020/1501 at 38 Undercliff Road, Freshwater, is considered acceptable from environmental, social and planning perspectives. Approval should therefore be granted by Council.