

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1095
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Responsible Officer:	Anaiis Sarkissian
Land to be developed (Address):	Lot 109 DP 13457, 81 Prince Alfred Parade NEWPORT NSW 2106
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Keith Roy Hobbs

Application Lodged:	22/08/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	30/08/2024 to 13/09/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 27%
Recommendation:	Approval

Estimated Cost of Works:	\$ 88,770.00
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### EXECUTIVE SUMMARY

This development application seeks consent for an eave and hip roof extension over the existing north-facing, second-storey deck, including new privacy screens and enclosed balustrading to the eastern and western sides of the deck.

The application is referred to the Development Determination Panel (DDP) due to the proposal having a height of 10.8 metres, representing a 27% variation to the 8.5 metres maximum height of buildings standard. This height breach arises from the steep sloping topography and previous excavation of the site creating a distorted height plane, with the excavated garage level being underneath the proposed works. The departure from the development standard has been justified through the submission of a written Clause 4.6 variation request which argues that based on extrapolated natural ground levels, the maximum height measures at a maximum of 7 metres. Given the proposal is for a hip roof

extension, the roof is only 10.8 metres at its highest point; the low point of the roof is 9.8 metres. Overall and despite the variation, proposal is considered minor as it forms an unenclosed structure and does not exceed the height of the existing roof ridge of the dwelling. The proposal also results in improved amenity for both the occupants of the dwelling and neighbouring properties with respect to solar protection and privacy.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for 14 days. No submissions were received.

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

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

## **PROPOSED DEVELOPMENT IN DETAIL**

This development application involves the following works:

- New eave and hip roof extension over the existing second storey, north-facing deck
- New privacy screens and enclosed balustrading to the eastern and western sides of the deck
- Demolition of an existing small awning over the doors to the northern façade of the deck

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living  
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings  
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

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

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot 109 DP 13457 , 81 Prince Alfred Parade NEWPORT NSW 2106
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Prince Alfred Parade.</p> <p>The site is regular in shape with a frontage of 14.03m along Prince Alfred Parade and a depth of up to 36.52m. The site has a surveyed area of 507m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living zone and accommodates a three storey dwelling with attached double garage and swimming pool.</p> <p>The site has a steeply sloping topography with an approximate 10m crossfall from the southern boundary of the site down towards the north.</p> <p>The site contains lawn areas and shrubs, with dense canopy coverage towards the rear.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by 2-3 storey detached dwelling houses, varying in architectural design and style.</p>

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:

### **N0285/16**

Development Application for demolition of existing structures and construction of a new dwelling.  
Approved 18 October 2016

### **CC2019/0424**

Construction Certificate issued for demolition of existing structures and construction of a new dwelling.  
Approved 12 April 2019

### **MOD2019/0484**

Modification of Development Consent N0285/16 granted for alterations and additions to demolition of existing structures and construction of a new dwelling.  
Approved 18 December 2019

### **DA2020/0267**

Development Application for construction of a swimming pool.  
Approved 23 April 2020

### **CC2020/0416**

Updated Construction Certificate issued for modified design to the dwelling house.  
Approved 29 April 2020

### **CC2020/0452**

Construction Certificate issued for construction of a swimming pool.  
Approved 13 May 2020

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

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p><b>(i) Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Matters for Consideration	Comments
accordance with the EPA Act or EPA Regs	
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 30/08/2024 to 13/09/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

## REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p><b><i>Supported, subject to Conditions</i></b></p> <p>Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable provisions:</p> <ul style="list-style-type: none"> <li>• Pittwater LEP 2014 cl. 7.6 Biodiversity Protection</li> <li>• Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community</li> <li>• SEPP (Resilience and Hazards) 2021 cl. 2.10 Development within the coastal environment area</li> </ul> <p>The proposed works are located within the existing built footprint of the dwelling and as such does not require the removal of any native prescribed vegetation or impact to native fauna habitat. As such there are no objections in relation to biodiversity, subject to conditions.</p>
NECC (Coast and Catchments)	<p><b><i>Supported, subject to Conditions</i></b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10, 2.11 &amp; 2.12);</li> <li>• State Environmental Planning Policy (Biodiversity &amp; Conservation)</li> </ul>

Internal Referral Body	Comments
	<p>2021</p> <ul style="list-style-type: none"> <li>• Relevant LEP and DCP clauses.</li> </ul> <p>SUPPORTED WITHOUT CONDITIONS</p> <p>Proposed works</p> <ul style="list-style-type: none"> <li>- Alterations and additions to a dwelling house including roof and eve extension over the existing second floor level</li> </ul> <p>State Environmental Planning Policy (Resilience &amp; Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal use Area' maps under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021. Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R &amp; H) apply for this DA.</p> <p>Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting dated August 2024 the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience &amp; Hazards) 2021.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b><i>Supported, subject to Conditions</i></b></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### SEPP (Sustainable Buildings) 2022

The proposal is classified as 'BASIX excluded development' as it does not result in a fully enclosed space, in accordance with the definition within the *Environmental Planning and Assessment Regulation 2021*, as extracted below. As such, a BASIX certificate is not required.

***BASIX excluded development means the following development—***

- (a) development for the purposes of a garage, storeroom, carport, gazebo, verandah or awning,*
- (b) development that involves the alteration of a building listed on the State Heritage Register under the [Heritage Act 1977](#),*
- (c) development that involves the alteration of a building resulting in a space that cannot be fully enclosed, other than a space that can be fully enclosed but for a vent needed for the safe operation of a gas appliance,*

*Example—*

*A verandah that is open or enclosed by a screen, mesh or other material that permits the free and uncontrolled flow of air.*

- (d) development that involves the alteration of a building declared by the Planning Secretary, by order published in the Gazette, to be BASIX excluded development.*

### SEPP (Transport and Infrastructure) 2021

#### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

#### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.



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

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

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

#### **Division 1 Coastal Wetlands and littoral rainforest area**

##### **2.7 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:**

The site is not identified as 'coastal wetlands' or 'littoral rainforests', and therefore this clause is not applicable.

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

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

#### **Comment:**

The site is not identified as 'proximity area for coastal wetlands' or 'proximity area for littoral rainforests', and therefore this clause is not applicable.

#### **Division 2 Coastal Vulnerability Area**

##### **2.9 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
  - ii) other land, and
  - iii) 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 incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

The site is not identified as a 'coastal vulnerability area', and therefore this clause is not applicable.

**Division 3 Coastal environment area**

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

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

Comment:

The site is identified within the 'coastal environment area'; however, the land has already been developed with a dwelling house and the proposal is simply for a roof extension and therefore does not alter the existing building footprint on the site. Additionally, the proposal has been supported by Council's Biodiversity and Coastal Officers. As such, it is satisfied that the proposed development is unlikely to cause an adverse impact on (a) to (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 subsection (1), or
  - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The site is identified within the 'coastal environment area'; however, the land has already been developed with a dwelling house and the proposal is simply for a roof extension and therefore does not alter the existing building footprint on the site. Additionally, the proposal has been supported by Council's Biodiversity and Coastal Officers. As such, it is satisfied that the proposed development complies with the requirements of this clause.

**Division 4 Coastal use area**

**2.11 Development on land within the coastal use area**

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

Comment:

The site is identified within the 'coastal use area'; however, the land has already been developed with a dwelling house and the proposal is simply for a roof extension and therefore does not alter the existing building footprint on the site. Additionally, the proposal has been supported by Council's Biodiversity and Coastal Officers. As such, it is satisfied that the proposed development complies with the requirements of this clause.

**Division 5 General**

**2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The land has already been developed with a dwelling house and the proposal is simply for a roof extension and therefore does not alter the existing building footprint on the site. Notwithstanding, the

proposal has been supported by Council's Biodiversity and Coastal Officers. As such, it is satisfied that the proposed development is not likely to cause an increased risk of coastal hazards on the subject land or other land.

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

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

Comment:

There is no certified coastal management program that applies to the land.

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

### **Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

### **Pittwater Local Environmental Plan 2014**

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

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	10m (slope >30%)	10.8m	27%	No

### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes

Clause	Compliance with Requirements
7.10 Essential services	Yes

#### Detailed Assessment

#### **Zone C4 Environmental Living**

The proposed works are located on land zoned C4 Environmental Living under the Pittwater Local Environmental Plan 2014.

The proposal has been assessed against the objectives of the C4 zone and in this instance, the proposal satisfies the objectives, as detailed below.

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

#### Comment:

The proposal will continue to provide for low-impact residential development within an area that contains special ecological, scientific or aesthetic values.

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

#### Comment:

The proposed roof extension does not alter the existing building footprint. The proposal has also been supported by Council's Biodiversity Officer. It is therefore satisfied that the proposal will not adversely affect those values.

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

#### Comment:

The proposal will continue to provide for residential development of a low density and scale that is integrated with the landform and landscape as the works involve only a roof extension over an existing deck.

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

#### Comment:

The proposed roof extension does not alter the existing amount of landscaping on the site does not involve the removal of any trees or native vegetation. The proposed alterations do not negatively impact riparian and foreshore vegetation and wildlife corridors. The proposal has been supported by Council's Biodiversity and Coastal Officers.

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

The proposed roof extension will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Pittwater LEP 2014, at 10.8 metres. While the the building footprint is situated on a slope greater than 30% at approximately 31.5%, pursuant to clause 4.3, subclause 2(D), development on such sites may exceed a height of 8.5 metres, but not more than 10 metres. As such, this dispensation cannot be utilised for the proposed development, and therefore the proposal presents a building height variation of 27% to the maximum standard of 8.5 metres. This height variation is justified under Section 4.6 of this assessment report.

#### **4.6 Exceptions to development standards**

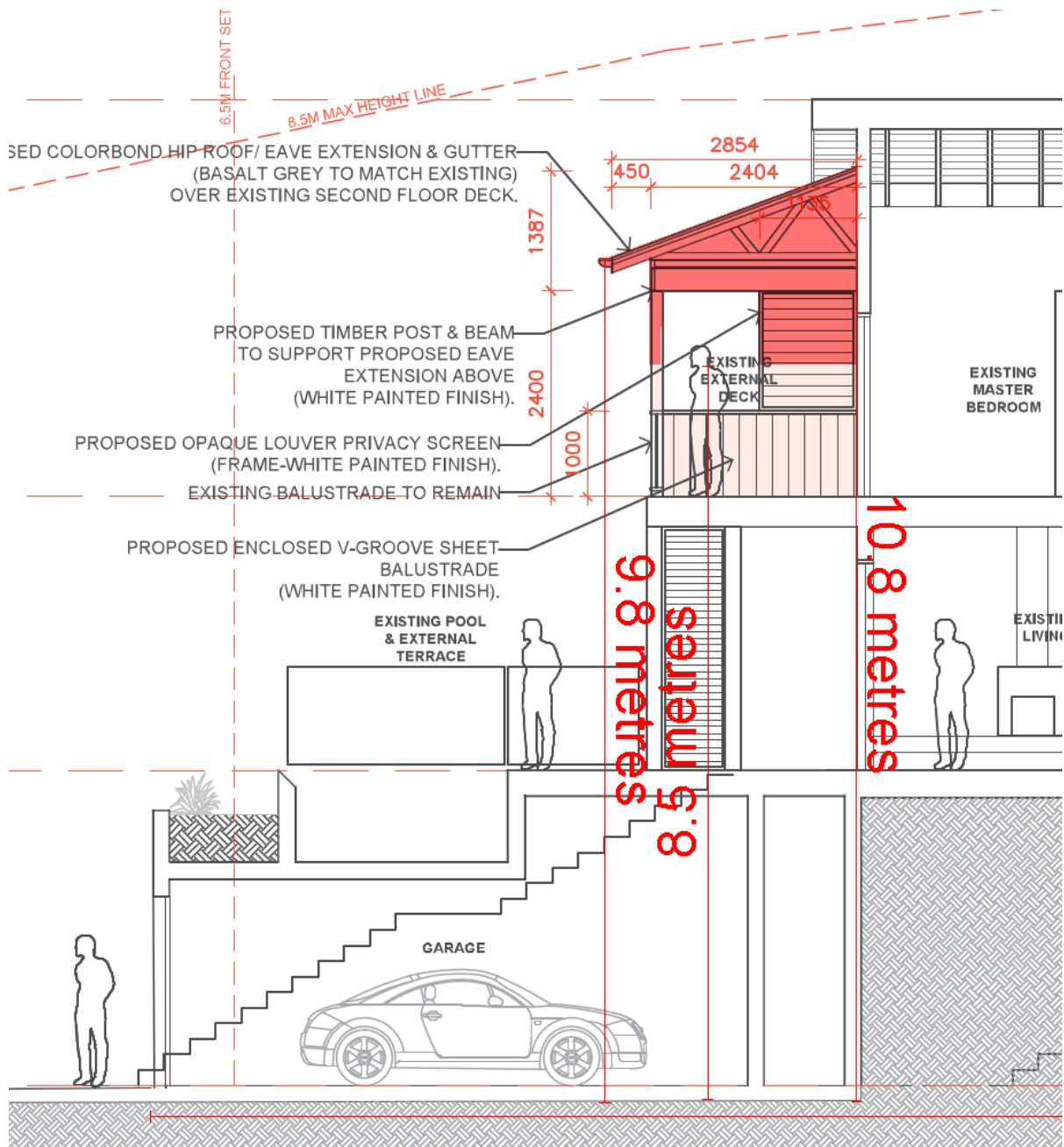
The application seeks consent to vary a development standard as follows:

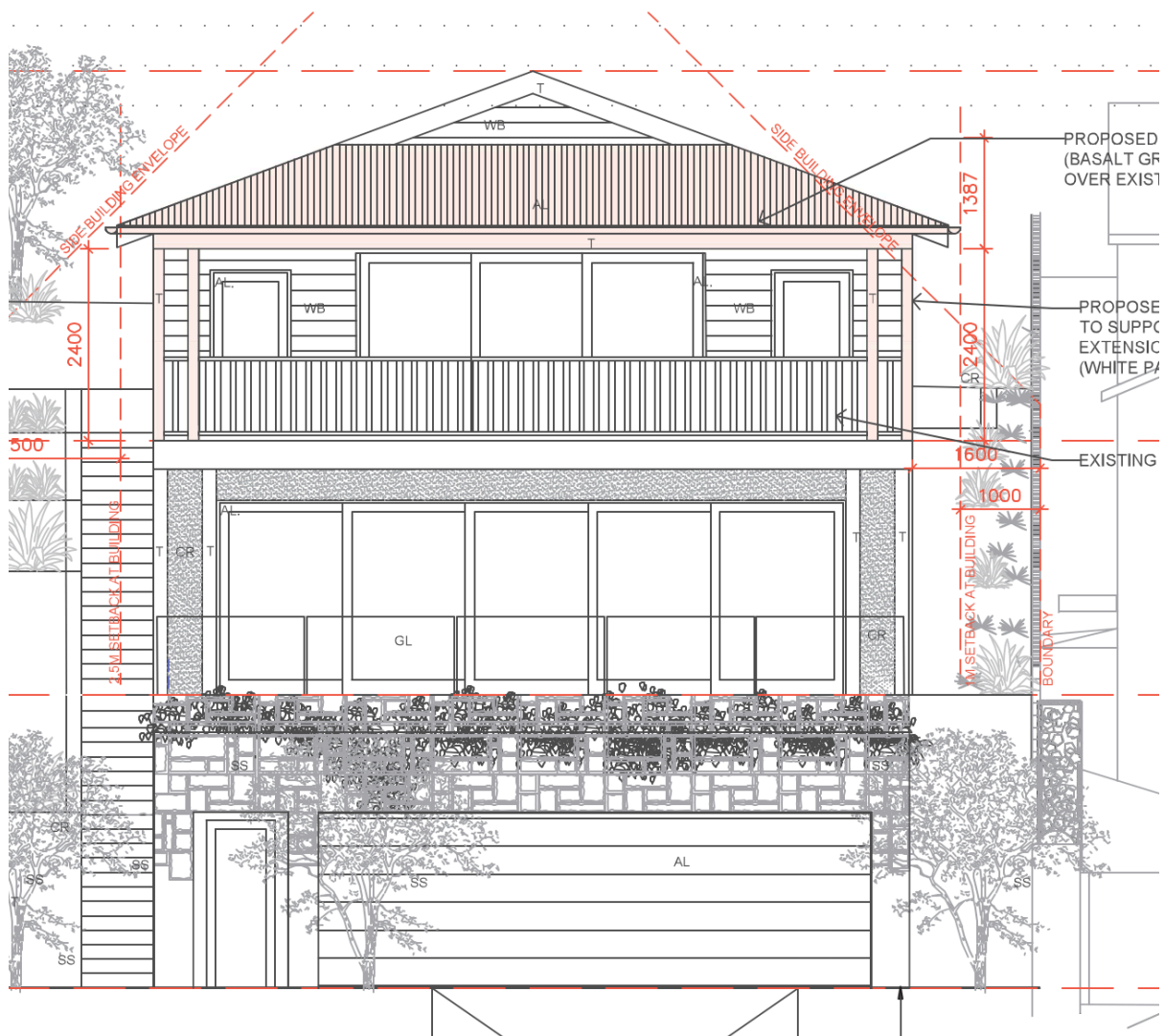
Development standard: Clause 4.3 Height of Buildings

Requirement: 8.5m

Proposed: 10.8m

Percentage of variation: 27%





**Figure 1 - extent of height breach indicated in red**

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the PLEP 2014 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:



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

Comment:

Clause 4.3 is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

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

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

Comment:

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

- *The proposal satisfies the objectives of the height of buildings standard, notwithstanding the non-compliance with the standard;*
- *The proposal is consistent with the desired future character of the Newport locality as the building maintains its height and setbacks and the built form is consistent with the existing pattern of newer development in the southern side of Prince Alfred Parade;*
- *The proposed development maintains consistency with the height and scale of the existing building and the surrounding dwellings in the immediate vicinity as the proposed roof extension overhangs an existing deck and does not exceed the overall ridge height of the existing building;*
- *The proposal minimises any overshadowing of neighbouring properties as the proposed roof extension is minimal in nature and creates an unenclosed structure. The height of the additional works will not unreasonably affect the primary living spaces and outdoor areas of the adjacent neighbour to the south, with the proposal consistent with Council's solar access requirements;*
- *The proposal allows for the reasonable sharing of views as the adjoining properties will continue to maintain their primary views to the north and north-west towards Pittwater. Additionally, the development has no unreasonable impact upon the existing views from further up slope of the site due to the higher placement/vantage point of these properties;*
- *The proposal is considered to respond sensitively to the natural topography as the new roof over the existing deck will not increase the overall ridge height of the building;*
- *The proposal minimises adverse visual impact of development on the natural environment and heritage significance as the proposed works will not see any further site disturbance, or loss of landscaped area, and the site does not join any heritage sites; and*
- *The uneven, steeply sloped topography and previously excavated levels create a distorted height plane.*

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

### Comment:

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

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

The Clause 4.6 Request argues, in part:

- The uneven, steeply sloped topography and previously excavated levels create a distorted height plane;
- The roof extension will provide improved amenity for occupants of the dwelling and neighbouring properties; and
- The proposal promotes the orderly and economic use of the land by maintaining consistency with surrounding development.

It is argued that the height non-compliance can be attributed to the prior excavation of the site within the footprint of the existing building, which has distorted the height plane over the development when compared to the natural topography of the land, as the excavated garage sits directly below the proposed roof extension. This is an environmental planning ground, in accordance with the findings of the NSW LEC in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. Additionally, the extension of the roof over the existing north-facing, uncovered deck will provide improved amenity for the building occupants through solar, weather and privacy protection. Furthermore, the proposed development will maintain the general bulk and scale of the existing surrounding development and maintains architectural consistency with the prevailing development pattern which promotes the orderly and economic use of the land.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 for the following reasons:

The height breach is a result of the uneven, steeply sloped topography and previously excavated levels creating a distorted height plane. The proposed development is an orderly and economic use and development of the land, and the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

### **Public Interest:**

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

### **Conclusion:**

Council is satisfied as to the matters set out in Clause 4.6 of the PLEP 2014.

It is considered on balance, that having regard to the particular circumstances, that the height of buildings breach caused by the proposed roof extension over the existing deck is relatively minor and an unenclosed structure that is caused by the steep sloping topography and previous excavation of the site, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

## Pittwater 21 Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	11.1m	N/A	Yes
Rear building line	6.5m	22.2m	N/A	Yes
Side building line	2.5m (east)	2.8m	N/A	Yes
	1m (west)	1.6m	N/A	Yes
Building envelope	3.5m (east)	Within envelope	N/A	Yes
	3.5m (west)	Outside envelope	23.5% (1.2m)	No
Landscaped area	60%	51.5% (261.3m <sup>2</sup> ) +6% impervious = 57.5%	N/A	Yes - unaltered

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	Yes	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

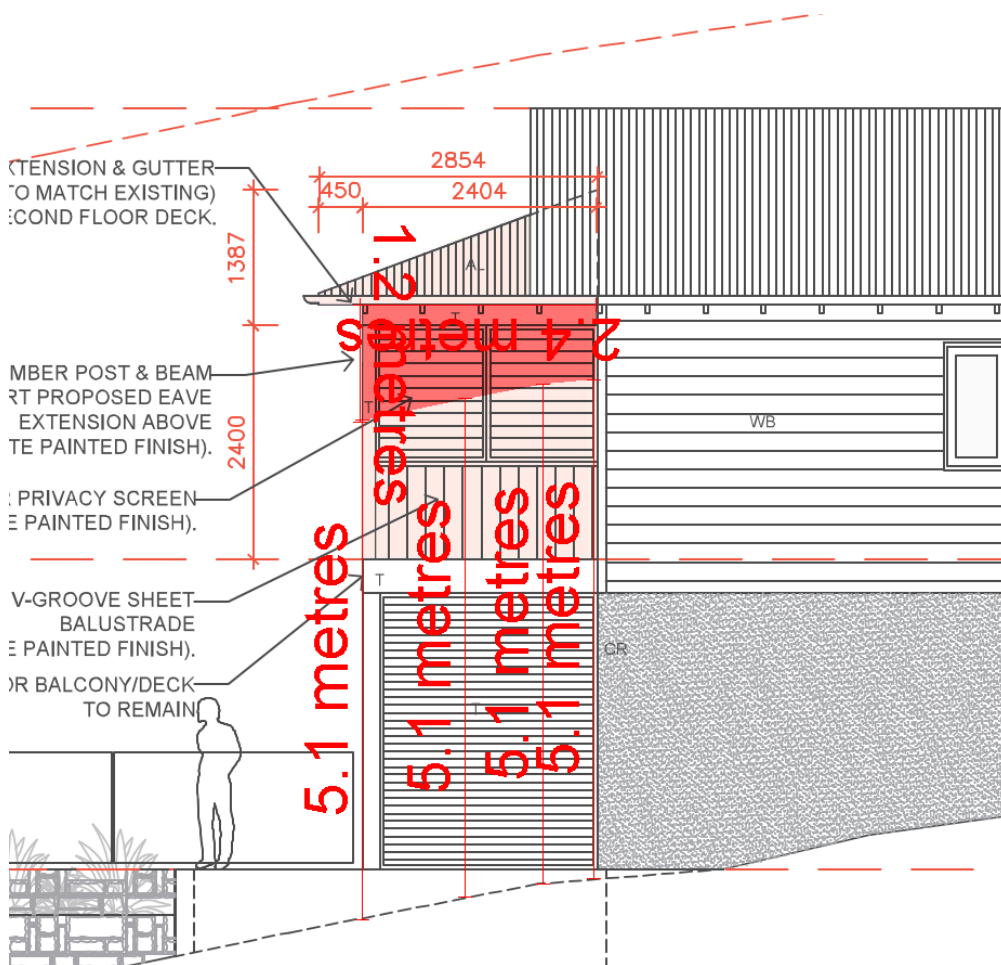
#### **D10.11 Building envelope (excluding Newport Commercial Centre)**

##### Description of Non-compliance

Pursuant to Section D10.11 Building envelope of the Pittwater 21 Development Control Plan, buildings must be sited within the building envelope which is determined by projecting planes at 45° from a height of 3.5m above the existing ground level at the side boundaries. Where the building footprint is situated on a slope over 16.7 degrees (30%), variation to this control will be considered on a merits basis.

The western elevation presents an encroachment of 1.2m in vertical height for a horizontal length of 2.4m, resulting in a maximum variation of 23.5% (1.2m), as shown shaded red below.

It is important to note that this envelope breach relates only to privacy screening along the western edge of the existing deck, and the building footprint is situated on a slope over 30%. As such, the breach is associated with an unenclosed structure with no provision of any windows, providing an improved planning outcome to the existing open air deck with respect to privacy and amenity. Furthermore, the western wall at the ground and first floors is compliant with the western side building line at 1.6m.



**Figure 2: extent of building envelope breach**

### Merit Consideration

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

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

#### Comment:

The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development and generally in keeping with the desired future character of the Newport locality.

- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

#### Comment:

The proposal, as a new eave and hip roof extension, does not detract from the existing streetscape as it complements the style and form of the existing roof shape. The proposal is of a scale and density that is below the height of the trees of the natural environment and does not exceed the existing ridge height of the dwelling.

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

Comment:

The proposed roof extension steps down from the height of the existing roof ridge, following the steep sloping topography of the site, and thereby sensitively responding to the spatial characteristics of the existing natural environment.

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

Comment:

The deck is existing and the proposal merely seeks to provide a roof above with privacy screening to either side. The proposal does not exceed the height of the existing roof ridge, thereby minimising the bulk and scale of the built form.

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

Comment:

The proposal continues to preserve views and vistas owing to the steep sloping topography of the site and the orientation of the dwelling north towards Pittwater. As such, the proposal does not obstruct views for neighbouring dwellings to the sides and rear of the property.

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

Comment:

The proposal does not result in an unreasonable level of additional overshadowing and provides increased amenity by providing shade on the north-facing deck for the dwelling occupants. The proposal also improves privacy both within the development site and to residential properties through privacy screening along both the eastern and western edges of the deck.

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

Comment:

The proposal does not involve the removal of any vegetation on the site.

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

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

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

## **Northern Beaches Section 7.12 Contributions Plan 2022**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

### **CONCLUSION**

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

### **PLANNING CONCLUSION**

This proposal, for an eave and hip roof extension over an existing deck, including privacy screening and balustrading, has been referred to the Development Determination Panel (DDP) due to the works having a 27% variation to the 8.5m maximum height of buildings standard, at 10.8m.

The proposed development was notified in accordance with the Northern Beaches Community

Participation Plan (CPP) for 14 days. No submissions were received.

The critical assessment included a detailed assessment of the proposed height variation under clause 4.6 of the *Pittwater Local Environmental Plan 2014*. The application has also been assessed against other relevant State Environmental Planning Policies, the *Pittwater Local Environmental Plan 2014*, and the controls under the Pittwater 21 Development Control Plan.

The assessment found that the proposed roof extension, privacy screening and balustrading is minor, owing to the unenclosed nature of the structure and the steep sloping topography and previous excavation of the site creating a distorted height plane. The proposal also sits below the height of the existing roof ridge of the dwelling and provides improved amenity in relation to privacy and solar protection.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

### **REASON FOR DETERMINATION**

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

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

### **RECOMMENDATION**

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Pittwater Local Environmental Plan 2014 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/1095 for Alterations and additions to a dwelling house on land at Lot 109 DP 13457, 81 Prince Alfred Parade, NEWPORT, subject to the conditions printed below:

### **Terms and Reasons for Conditions**

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

## **GENERAL CONDITIONS**

### **1. Approved Plans and Supporting Documentation**

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

<b>Approved Plans</b>
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Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA-001	-	Site Plan	Daniel Raymond Architect	9 July 2024
DA-102	-	Second Floor Arrangement Plan	Daniel Raymond Architect	9 July 2024
DA-102	-	Roof Plan	Daniel Raymond Architect	9 July 2024
DA-300	A	Elevation Sheet 01	Daniel Raymond Architect	9 July 2024
DA-301	-	Elevation Sheet 02	Daniel Raymond Architect	9 July 2024
DA-302	A	Elevation Sheet 03	Daniel Raymond Architect	9 July 2024
DA-400	-	Section Sheet 01	Daniel Raymond Architect	9 July 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
DA-002 Stormwater Management Plan	-	Daniel Raymond Architect	9 July 2024
Proposed Schedule of Colours, Materials and External Finishes	-	Daniel Raymond Architect	15 August 2024
Geotechnical Statement	0	Douglas Partners Pty Ltd	9 July 2024
Waste Management Plan	-	No Author	12 August 2024

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	30 August 2024

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on

Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

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

**3. Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

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

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.

- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

#### 4. **General Requirements**

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 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) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) 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.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) 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.
- (f) 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.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
  - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it

applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
  - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) 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.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) 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.
- (m) 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.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.

(p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

## **FEES / CHARGES / CONTRIBUTIONS**

### **5. Security Bond**

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

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

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

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

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

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

### **6. No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

### **7. Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

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

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

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

Reason: To ensure satisfactory management of stormwater.

### **8. Compliance with Standards**

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

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

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

### **9. External Finishes to Roof**

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to

the SA range.

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

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

10. **Sydney Water "Tap In"**

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

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

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

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

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

## DURING BUILDING WORK

11. **Wildlife Protection**

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

Reason: To protect native wildlife.

12. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

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

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

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

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

14. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

15. **Demolition Works - Asbestos**

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

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

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

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

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

16. **Survey Certificate**

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

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

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

17. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

**BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

18. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a



Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

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

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

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

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

Reason: To ensure satisfactory management of stormwater.

**19. Waste Management Confirmation**

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

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

**20. Swimming Pool Requirements (existing pool modified by works)**

The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

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

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018;
- (iv) Australian Standard AS1926 Swimming Pool Safety;
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools;
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

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

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

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

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

Reason: To protect human life.