

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1522
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Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 2 DP 7391, 43 Beach Road COLLAROY NSW 2097 Lot 1 DP 300846, 41 Beach Road COLLAROY NSW 2097
Proposed Development:	Consolidation of two lots into one, demolition works and construction of a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Russell Forester Staley Jennifer Susan Staley
Applicant:	Virginia Kerridge Architect

Application Lodged:	20/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	22/06/2020 to 06/07/2020
Advertised:	Not Advertised
Submissions Received:	22
Clause 4.6 Variation:	4.3 Height of buildings: 1.1%
Recommendation:	Approval

Estimated Cost of Works:	\$ 5,800,000.00
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EXECUTIVE SUMMARY

The Development Application (DA) seeks approval for the demolition of the existing dwellings and the construction of two storey five (5) bedroom dwelling spanning both blocks with a basement car park and storage area and an in ground swimming pool. The contemporary dwelling design comprises two pavilions with a linking connecting pavilion. The application is being referred to the NBLPP as more than ten (10) submissions have been received.

Principal assessment issues with the development proposal relate to the height, bulk and scale of the development and perceived impacts on the character of Collaroy Basin and its landscape and Headland park setting.

The majority of the development sits below the 8.5 m height limit. However, the south-east corner of the roof breaches the height limit by 0.1 m (1.1% variation) when calculating the height using the existing ground level as suggested by the objectors. The 0.1 m breaching element is set back 8.8 m from the southern boundary and will not, in itself, result in an amenity impacts by way of view loss or overshadowing and there is no perceivable visual impact of the minor breach on the locality.

Due to the spatial separation of the development amenity impacts to neighbouring residents have been considered including an assessment of issues relating to privacy, view loss and solar access. In the context of the full assessment these specific issues have been considered within the report and detailed comments provided with respect of engineering, landscaping, urban design, bio-diversity and coastal management.

A total of twenty-two (22) submissions have been registered following notification of the application. These includes multiple submissions from the same address and submissions relating to the issues which are not relevant to the DA. In addition to the issues listed above, the following issues were raised: excavation and construction impacts, stormwater issues and documentation issues especially those relating to the existing site levels to the southern boundary and within the vicinity of the pool.

Amended plans and additional information has been submitted on four (4) occasions. The amendment plans, Revision E, correct documentation issues relating to existing ground levels and include the following amendments to the design: An increase in the setback of the development from the southern and eastern boundary, a reduction in the bulk, massing and scale of the development to the southern elevation, a reduction in the height of the proposal a modification to the design of the fence to the southern boundary and address issues relating to solar access and visual bulk. In additions, conditions are recommended to address those concerns raised in the public interest.

On balance, the proposal is recommended for approval having considered relevant issues and the assessment of the design plans submitted.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the demolition of the existing single storey dwelling at 39 Beach Road and the and two storey dwelling 41 beach Road and construction of a part two/ three storey dwelling spanning both blocks with a basement car park and storage area and an in ground swimming pool. The dwelling design comprises two pavilions with a linking connecting pavilion. In detail the proposal includes:

Basement

Excavation up to a depth of 4.6 m for the construction of the basement parking and storage level. The basement is setback a minimum of 1.5 m from the northern boundary, 4.2 m from the southern boundary, 7.6 m from the western boundary and 7.5 m from the eastern boundary and has a Finished Floor Level (FFL) of 8.350. The basement will accommodate the following:

- Two (2) car parking spaces and turning circles.
- A storage area.
- Cellar.
- Playroom.
- Bathroom.

- Bin storage area.
- Lift access and
- Pool and plant room.
- Vehicular access to the basement is proposed via a ramp proposed in the location of the existing pedestrian access on lot 1 and setback 0.9 m from the southern boundary.

Ground Floor

Northern pavilion FFL 12.00 (note existing FFL 12.95)

- Rumpus.
- Guest bedroom with ensuite.
- Laundry.
- Informal living and
- Stairs and corridors.

Central pavilion FFL 12.00

- Entry.
- Living room.
- Skylights within roof.

Southern pavilion FFL 11.24

- Kitchen, pantry and dining FFL 11.24.
- Living area FFL 12.00.
- WC and laundry.
- Stairs and lift.

First Floor

Northern pavilion FFL 15.42

- Bedroom 1 with deck, walk in wardrobe and ensuite.
- Bedroom 2.
- Bedroom 3 .
- Bathroom and WC.
- Lounge and deck.
- Stairs and corridor.
- Green roof in part.

Southern Pavilion FFL 14.85

- Master bedroom with deck.
- Bathroom.
- Walk in wardrobe.
- Corridor, lift and stairs.

Garden

- Pool and spa with adjoining courtyard / garden.
- Outdoor dining area enclosed with sliding screens to the southern boundary.
- WC.
- Paved pedestrian footpath via Beach Road.
- Removal of 6 trees.
- Landscaping along all boundaries.
- Boundary treatment: eastern boundary - 1.2 m timber fence, northern boundary - 1.8 m timber fence, southern boundary - 1.2 m high steel post safety fence, western boundary part 1.2m timber fence and 2 m - 2.6 m high wall.

Materials

Non reflective metal roof, brick walls, concrete features, aluminium windows and doors, timber cladding, screens and 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

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - C7 Excavation and Landfill
 Warringah Development Control Plan - C8 Demolition and Construction
 Warringah Development Control Plan - D3 Noise
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk
 Warringah Development Control Plan - D11 Roofs
 Warringah Development Control Plan - D15 Side and Rear Fences
 Warringah Development Control Plan - E7 Development on land adjoining public open space

SITE DESCRIPTION

Property Description:	Lot 2 DP 7391 , 43 Beach Road COLLAROY NSW 2097 Lot 1 DP 300846 , 41 Beach Road COLLAROY NSW 2097
Detailed Site Description:	The subject site consists of two (2) allotment located on the eastern side of Beach Street. The sites is legally described as Lot 1 of DP 300846 (41 Beach Road) and Lot 2 SEC7 of

DP 7391 (43 Beach Road). Lot 1 is 853.25sqm and Lot 2 is 690.92sqm.

The site is irregular in shape with a frontage of 15.2m along Beach Street to the west, a depth of 45.6m to the northern boundary and 40.8m along the southern boundary and a frontage of 38.5m to the east towards the foreshore reserve, known as Fox Park.

The site is located within the R2 Low Density Residential zone in the WLEP 2011. The existing house on Lot 1 of DP 300846 (41 Beach Road) is a single storey rendered residence with a terracotta tile roof. It is set back 30.49m from the front boundary. The street frontage is a concrete driveway that is 2.55m wide, which also provides pedestrian access. The back garden has stone paved patios and a swimming pool, with views of the ocean to the east.

The existing house on Lot 2 SEC 7 of DP 7391 (43 Beach Road) is a two-storey weatherboard and rendered residence with tiled roof. It is set back 9.9m from the front boundary. There are two paths of access, on the northern boundary there is a 2.51 m sandstone paved driveway, on the southern boundary there is a 1.98 m wide concrete walkway for pedestrian access.

The combined site is located atop of the headland at the southern end of Collaroy Beach directly adjacent to Fox Reserve to the east. The majority of the site is level, with the exception of a portion towards the south/south-east that slopes drastically at an average gradient of 21.9 degrees resulting in an approximate 4.4 m change in level from the west (street frontage) to the south eastern corner (back of block). The site is retained along the southern side boundary by a sandstone block retained wall.

A number of trees are located within the site and adjoining the site including two mature Norfolk Pines located to the immediate east on the foreshore verge.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached houses one and two storey dwellings of varying architectural design. Fox Reserve directly adjoins the site to the east with Collaroy Rock pools beyond this. Collaroy Beach is located to the north and Fishermans Beach is accessible via steps from Fox Reserve to the south.

Map:



SITE HISTORY

A search of Council's records has revealed the following:

Development application DA2003/0388 for alteration and addition to existing two storey dwelling at No 43 Beach Road was approved on 11 June 2003.

Development Application DA2012/0974 for the construction of a pool at No. 41 Beach Road was approved on 12 October 2012.

Pre-lodgement Meeting PLM2019/0024 was held on 28/02/2019 for demolition works and construction of a dwelling house and pool. Issues raised at PLM related to the following:

- Wall height - none compliant on the southern and western elevations;
- Side building envelope control - non compliance with the western elevation of the southern wing;
- Rear setback - the elevated covered deck requires a 56.6% non-compliance and will result in a significant built form within the rear setback area. This element is not consistent with the rear setback objectives of the Warringah DCP 2011. Council cannot support the proposed deck in its current form;
- Excavation and landfill - The excavation for sub-floor storage should be reduced to minimise site disturbance and preserve the integrity of the physical environment;
- Access to sunlight - concern is raised with the overshadowing of the private open spaces of 29, 35 and 39 Beach Road;
- View - a view loss analysis be conducted prior to the submission of the development application. The analysis should take into consideration the views from the adjoining and nearby properties. The design of the development should be informed by this analysis to ensure the reasonable sharing of views within the area;
- Engineering - advise was provided in relation to the design of the driveway;
- Landscape - An arborist report and landscape plan are required. The application is to address the transitional interface between the property and the public reserve in accordance with WDCP E7 - Development on land adjoining public open space.
- Biodiversity - Development is to be situated and designed to minimise the impact on prescribed

vegetation, including remnant canopy trees, understorey vegetation, and ground cover species. Development is to be designed to address any distinctive environmental features of the site and on adjoining nearby land. Development should respond to unique environmental features through location of structures, outlook, design and materials. The subject site is heavily modified with minimal native vegetation remaining. As the site is identified as located within a wildlife corridor, any new landscaping is to comprise predominantly locally native vegetation.

- Coastal - The application must address the requirements of both the Coastal Management Act 2016 and the State Environmental Planning Policy Coastal Management.

With the exception of the elevated deck proposed to the east elevation the Applicant notes that the subject application has been revised to address the issue raised in the PLM notes.

History of subject development application

On 28 April 2020, a letter was sent to the Applicant raising issues with respect to the east facing deck and level 1 roof breaching the rear 6m setback, privacy issues relating to windows and decks, insufficient information to assess the solar access requirements, height poles to be installed to assess view loss side envelope breach, clarification of RLs and a request to ensure that all RLs are correctly annotated on the architectural drawings.

On 29 May 2019 amended plans, Revision B, and additional details were submitted which included:

- Deletion of the upper floor east facing deck to the kitchen to be replaced with a pop out window seat contained within the 6m rear setback.
- a 1.5m increase in the setback of the southern pavilion from the southern boundary, with additional planting in the 3.4m setback.
- a 280mm reduction in the roof height of the north and south pavilion.
- The addition of privacy screens to the upper floor decks on both the north and south pavilion.
- A modification of the ground floor roof from concrete to a lightweight non reflective structure.
- A reduction in the overhand of the ground floor eave to 450mm.
- Relocation of the pool further north to reflect the re-position of the southern pavilion.
- Basement lift moved to reflect the re-position of the southern pavilion.
- South east corner basement envelope adjusted to set back further from the east boundary.
- The design of the privacy screen to the kitchen and pantry windows amended to be less bulky as requested by the neighbour at No. 29 Beach Road.
- Updated shadow diagrams prepared for No. 29 and No. 35 Beach Road.

The amended plans were re-notified with letters been sent to additional properties and all those that made a submission to the original DA.

On 3 July 2020 updated plans, revision C and additional details were received by Council which included:

- A clause 4.6 variation in respect of the building height development standard.
- Additional information in respect of building height, wall height and side envelope control issues.
- A view loss analysis of 29 Beach Road.
- The location of the southern boundary updated on the plans.
- The addition of privacy screens to the northern edge of the deck to bedroom 1.

On 29 July 2020 amended plans, revision D, and additional information were submitted which include

the following amendments:

- Ground floor of the southern wall moved 0.5m to the north.
- First southern wall has been moved to the north between 0.3 m to 0.61 m.
- Kitchen southern wall and roof to be built on an angle.
- Kitchen's FFL has been reduced from FFL 12.00 to FFL 11.24 (-0.76 m).
- Master bedroom's FFL has been reduced from FFL 15.42 to FFL 14.85 (-0.57 m).
- Southern wing Roof has been lowered by 0.57 m.

In accordance with the revised Community Participation Plan (CPP) the amended plans do not require formal re-notification as the changes result in a lesser or reduction of environmental impacts. Nonetheless, all those that made a submission on the original DA have been notified by email of the amended plans and advised that the plans are available to view on Council's website.

One additional joint letter of submission had been received from the principle objectors reiterating issues that have been raised before and maintaining that due to the applicant not using the correct existing ground levels to the southern portion of the site in the area near the pool that the proposal breaches the maximum building height, street wall height, and side envelope controls. A number of emails were also received from the owner of No. 39 Beach Road advising that there area inconsistencies and errors in the plans.

On 21 August 2020, the applicant submitted amended plans, revision E, to respond to the submission showing the correct levels in the area around the swimming pool. The plans also corrected inconsistency with previous plans and include an amendment to the design of the proposed fence to the southern boundary to a 1.2m high see through safety fence. Again the amended plans do not require re-notification, however, an email was sent to all those that made a submission on the original DA to notify them that the plans are available to view on Council's website.

On 26 August 2020, the applicant submitted an amended Clause 4.6 variation and amended shadow diagrams.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.

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

Section 4.15 Matters for Consideration'	Comments
	impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 22/06/2020 to 06/07/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 22 submission/s from:

Name:	Address:
Boston Blyth Fleming Pty Ltd	1 / 9 Narabang Way BELROSE NSW 2085
Ms Jan Maree Dorsen	35 Beach Road COLLAROY NSW 2097
Mrs Mary-Anne Armstrong	6 Aitken Avenue QUEENSCLIFF NSW 2096
Gregor Millson Mrs Wendy Anne Millson	6 / 176 South Creek Road CROMER NSW 2099
Rebecca Thomas	1174 Pittwater Road NARRABEEN NSW 2101
Sargood Foundation	1 Brissenden Avenue COLLAROY NSW 2097
Mr Jason Phillip Bennett	33 Beach Road COLLAROY NSW 2097
Ms Victoria Jane Weaver Mr William John Buckle	29 Beach Road COLLAROY NSW 2097
Mrs Roberta Leader Corben	9 Brissenden Avenue COLLAROY NSW 2097
Mark Stevens	Address Unknown
Mr Maxwell Alan Howell	38 Beach Road COLLAROY NSW 2097
Mrs Kate Elizabeth Halliwell	14 Bungalow Avenue BALGOWLAH HEIGHTS NSW 2093
Peter Joseph McGoldrick Mrs Marie Bernadette McGoldrick	36 Beach Road COLLAROY NSW 2097
Mr Michael Richard Burns	32 Beach Road COLLAROY NSW 2097

Name:	Address:
Mr David William Taylor	40 Beach Road COLLAROY NSW 2097
Robyn Storey	16 Beach Road COLLAROY NSW 2097
Mr Simon Alexander Dan	39 Beach Road COLLAROY NSW 2097
Mr Gerard Sebastian Barwell	23 Beach Road COLLAROY NSW 2097
David Antony Keith Cohen Schaan Cohen	25 Beach Road COLLAROY NSW 2097
Justin Charles Halliwell Kate Elizabeth Halliwell	31 Beach Road COLLAROY NSW 2097
John Joseph Armstrong Margaret Mary Armstrong Catherine Ellen Dewe Mathews	45 Beach Road COLLAROY NSW 2097
Patricia Joan Armstrong	1 A Highview Avenue QUEENSCLIFF NSW 2096

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

- Overdevelopment - Excessive height, density, bulk and scale, especially southern elevation.
- Out of character with the Collaroy Basin area / impact on adjoining headland park and view from Fishermans Beach.
- View loss.
- Visual and acoustic privacy issues.
- Loss / impact of tress / natural vegetation.
- Impact on wildlife.
- Non compliance with built form controls, rear setback, height, wall height, envelope, side setbacks.
- Overshadowing.
- Structural adequacy of excavation on the retaining stone wall and neighbouring properties.
- Excessive excavation requirement for a dilapidation report.
- Excessive 5.2 m height of side southern boundary fence.
- Construction impacts noise, vibration.
- Stormwater Management issues.
- Misleading and inaccurate documentation including details of ground levels.

While 14 submission were received in response to the original proposal, these include one letter of support and a letter from Sargood requesting consideration for a pedestrian crossing and other work to the public footpath and road. The Sargood request is neither reasonable or relevant to the consideration of the subject DA for a single dwelling. The Sargood letter has been sent to Council's Transport Department for consideration. Four separate submissions have been received which respond to the Sargood request, again these do not directly relate to the subject DA. Multiple submissions were received from two properties / owners, which under the Community Participation Plan (CPP) are treated as one submission. In summary, a total of six (6) relevant submissions were received in response to the original proposal.

The amended proposal, revision B, was re-notified on 3 June 2020. In response to the re-notification an additional 10 submission were received, six (6) submission being from persons that lodged submission to the original proposal in addition to four (4) submissions from other people.

In addition to the issues raised with the original proposal the following new issues have been raised as

a response to the re-notification:

- View loss assessment requested for No 39 Beach Road as a result of the southern wing. It is noted that the height poles confirm that there will be view loss;
- Concerns about the bulk and scale of the western elevation, details are requested;
- The drawings remain to be incorrect in respect of the correct position of the southern boundary and levels. It is noted that an independent survey has been commissioned by Norton Survey which confirms that the principles of the LTS Survey submitted with the DA is correct. The architectural drawings need to be updated with the correct southern boundary and RLs in order to allow Council to make a lawful decision;
- The proposal remains to be non-compliant with the height of building, wall height and side boundary envelope controls.
- The DA montage confirms that the development is visually dominant by virtue of height and bulk on adjoining properties and public areas.
- The development will overshadow the public park the dwelling encroaches on the hillside and cliff top.
- The Clause 4.6 variation makes no reference to the side boundary envelope control

On 29 July 2020 amended plans were received, revision D. In accordance with the revised CPP the amended plans did not require formal re-notification as the changes result in a reduction of environmental impacts. Nonetheless, all those that made a submission on the DA have been notified by email of the amended plans and advised that the plans are available to view on Council's website.

One additional joint letter of submissions had been received from the principle objectors at No. 29 and 35 Beach Road reiterating issues that have been raised before and maintaining that due to the applicant not using the correct existing ground levels in the area around the pool that the proposal breaches the maximum building height, street wall height, and side envelope controls. In addition, a number of e-mails were received from the owner of No. 39 Beach Road advising that there were errors in the drawings.

On the 21 August 2020, the applicant, in response to the joint submission from No. 29 and 35 Beach Road lodged amended drawings, revision E, showing the correct existing ground levels in the area around the pool. The design of the fence on the southern boundary has also been modified and all drawings corrected. At the time of writing this report one additional joint submission was received from the principle objectors at No. 29 and 35 Beach Road reiterating issues raised before and objecting to the 1.2 m high see through safety fence.

In summary, it is calculated that a total of:

- Six (6) submission were received in response to the original application, revision A, and one (1) letter of support.
- Four (4) additional submission were received in response to the first amendment, revision B.
- One (1) joint submission was received from owners that had made submissions to the previous scheme to revision D
- One (1) joint submission was received from the same owners to revision E.

The matters raised within the submissions are addressed as follows:

- **Overdevelopment - Excessive height, density, bulk and scale, resulting in an unacceptable building bulk to the public domain and southern neighbours.**

Comment:

Southern Pavilion

The proposal has been amended to reduce the height, bulk and scale of the development and increase the setbacks from the southern and eastern boundaries. It is noted that the pavilion is set back 3.9 m at ground level and up to 8.6 m at first floor level from the southern boundary (the WDCP requires a 0.9m setback to the boundary). The elevated east facing deck has also been deleted to ensure that the pavilion complies with the 6 m rear set back to Fox Reserve so that the proposal does not dominate the public reserve.

The plans, revision E, have also been amended to identify the extrapolated existing ground level in the area to the north of the existing pool. The amended plans also superseded previous drawings, including the height analysis plans, which incorrectly referred to the the wrong calculations. Sufficient material has been submitted for Council to make a lawful decision and it is not necessary to reject the application.

A further submission has been lodged in respect of revisions E stating that the levels identified around the pool are incorrect. As a result of the incorrect ground levels being identified the objectors maintain that the development breaches the 8.5 m height limit. Given that there is a variation in the levels associated with the early earthworks to construct the pool in the south-east corner of the site the proposal has been re-assessed using the lower level suggested by the objectors. This re-assessment has identified that there is a 0.11 m breach (1.1%) in the 8.5 m height limit in the south-east corner of the roof. While the breach in itself does not give rise to unreasonable environmental impacts in terms of visual bulk, view loss or overshadowing. An amended Clause 4.6 variation has been submitted which has been assessed as acceptable. Refer to discussion under clause 4.3 and 4.6 WLEP of this report.

The proposal complies with all other built form controls contained in the WDCP with the exception of a minor breach to the wall height and side envelope controls in the south-east corner of the southern pavilion, refer to discussion under clause B1 (wall height), B3 (side envelope) and and (Building Bulk).

The amended proposal has been design to ensure that the amenity of the southern neighbours is protected with respect of solar access and privacy. Conditions are also recommended to ensure that neighbouring residential amenity is maintained. Refer to discussion under clause D6 (access to sunlight) and D8 (privacy) within this report.

The two storey southern pavilion is setback between 3.2 m and 5.7 m from the western boundary. The height, bulk and scale of the development to the western boundary has also been assessed as acceptable noting that it fully complies with all built form controls to this boundary.

In regards to issues relating to the bulk of the proposed 1.8 m high timber fence in top of the existing sandstone wall this has been amended to a 1.2 m see through safety fence which has been assessed as an acceptable solution which addresses issues relating to bulk and solar access. The latest submission has requested that the 1.2 m high fence be deleted as concern has been raised regarding the visual bulk and solar access issues. The 1.2 m high safety fence is required to comply with the BCA and given the light weight see through design it is not expected that the fence will result in solar access issues. Refer to discussion under clause D15 (side and rear fences).

- **The design is out of character with the Collaroy Basin. The architectural outcome to the southern boundary is composed of multiple styles that clash in composition. The brutalist form include a bland box style on the upper level awkwardly positioned to the**

brutalist envelope below. It is requested that the application is reviewed by the Design & Sustainability Advisory Panel (DSAP).

Concern has been expressed about the architectural design and the visual impact of the proposal on the headland as viewed from the south. A number of submission raised concern with the design being out of character with the area. While the appreciation of the design is a subjective matter Council consider the proposed contemporary beach architecture to be innovative not brutalist. Angular features are used throughout the dwelling as a consistent design feature and include the angled roof form over the central linking pavilion, the skylights, the angled roof over the kitchen at ground level and the projecting corner windows on the first floor of the southern elevation.

Due to the elevated position of the site the dwelling will be visible from the south. However, the perceived bulk and massing of the dwelling as viewed on approach to the site from the south and from Fishermans Beach has been reduced with the design amendments and the modulation of the southern facade. The elevated deck has been removed from the east elevation to reduce the visual impact to the adjoining Fox Reserve Headland Park. The existing dwellings on the subject site are currently visible from Fishermans Beach and on approach to the site from the south. The amended photomontage illustrate the that bulk, scale and height, of the proposed dwelling, as amended, will not result in unacceptable visual impact on the Headland or public domain and the proposal is not considered to be out of character with the area.

The surrounding area has a mixture of traditional and contemporary one and two storey dwellings. It is noted hat there are a number other contemporary building within the immediate area including Sargood and the dwellings at No. 51 and No. 47 Beach Road. As such, the contemporary design of proposed dwelling is not considered to be out of character with the area.

It is been requested that the development application is reviewed by the Design & Sustainability Review Panel (DSAP). The Panel has been created to provide independent design advice for large scale applications lodged after 1 August 2020 including SEPP 65 applications, multi-unit housing developments, boarding houses, student housing, seniors housing, mixed use developments and shop top housing. As a DA for a single dwelling the proposal does not fall within the category requiring a referral to DSAP. It is noted that the proposal has been reviewed by Council's Urban Designer who raises no objections to the amended design.

- **View loss**

Comment:

To determine the extent of view loss from the proposal, Council has applied the four principles outlines within the Land and Environment Court case Tenacity Consulting v Warringah Council. This is discussed in detail under section Clause D7 of this report.

In summary, the nature of the view (principle 1) are ocean views and views of the land interface with Fishermans Beach and Long Reef Headland to the south-east. Principle 2 views from neighbouring properties to the west, north and south can be observed from the living rooms, dining room, kitchens, bedrooms and decks across the site from the rear and side boundaries of the site. Principle 3 the extent of the impact has been reduced with the amended design which increases the southern and east setback of the development and reduced the height of the proposed dwelling. Principle 4, with the exception of minor breaches in the wall height and side envelope controls the development is generally complying and has been assessed as

reasonable with moderate to minor impacts on view loss.

It is also noted that the applicant has submitted a view loss assessment for No.39 Beach Road, as requested by the owner, and installed height poles as requested by Council. The height poles relate to the original proposal which has since been amended to increase the setbacks to the east and southern boundary and reduce the height of the development.

- **Visual and acoustic privacy**

Comment:

Issues are raised in regards to acoustic and visual impacts on neighbouring properties as a result of the rear ground level outdoor dining area and the location of windows and decks.

The rear outdoor dining area is located 6.4 m from the southern boundary, approximately 16 m from the north - east corner of No. 35 Beach Road. The objectors have requested that a closed acoustic rated wall be constructed in place of the sliding panels along the southern edge of the outdoor dining area. Given the setback of the outdoor dining area, the proposed screen planting along the boundary and the wall along the western boundary it is not anticipated that the proposal will result in unreasonable acoustic and visual privacy impacts to No 39 or No. 35 Beach Road. Nevertheless, in order to ensure that visual privacy is maintained to No. 35 Beach Road a condition requires fixed privacy screens to be installed along the southern boundary for a length of 12 m starting in the south-west corner and set back 0.9 m from the existing sandstone or where there is no wall 0.9 m from the southern boundary. This is discussed in detail under section Clause D8 (privacy) of this report.

Concern is also expressed about visual privacy impacts as a result of the south facing windows in the basement. A condition requires that the design of the window be modified to a highlight window

Conditions also requires privacy screens to be installed on the north facing bedroom windows and deck to protect the visual privacy to No. 45 Beach Road and the south facing kitchen window to a height of 1.6 m to protect the visual privacy to No 29 Beach Road. A condition also requires that the first roof deck (the green roof) not be accessible.

In summary, the design uses a combination of privacy devices including angled windows with oblique views, screen planting and the installation of privacy screens to optimise privacy for the occupants and neighbours. In addition, conditions reinforce the design to ensure privacy is maintained. Refer to discussion under Clause D8 (privacy).

- **Loss / impact of tress / natural vegetation;**

Comment:

The proposal includes the removal of six (6) trees and includes protection measures for the retention of the Norfolk Pine Trees. The proposal has been assessed by Council' Landscape Officer who raises no objections to the proposal subject to conditions including a condition to maintain the existing ground levels adjacent to the Norfolk Pine tree (tree 13) in order to minimise the impacts on the Norfolk Pine tree.

Issues are raised regarding the inadequate details of landscaping. The proposed landscape details have been assessed by Council's landscape officer as acceptable subject to conditions.

The conditions include the requirement to submit amended landscape plans that reflect the current revision and ensure species selection along the southern boundary will not result in issues with regards to solar access.

Refer to the comments from Council's landscape Officer within this report.

- **Impact on wildlife.**

Comment

Council's biodiversity Officer has assessed the proposal and confirmed that the proposal addresses the requirements of the State, LEP and DCP provisions relating to wildlife. No objections are raised in regards to impacts on wildlife.

- **Non compliance with built form controls, rear setback, height, wall height, envelope, side setbacks.**

Comment

The proposal has been amended to fully comply with the setbacks controls and the 8.5 m building height controls. There are minor breaches in the 7.2 m wall height control and side envelope control primarily relates to the eaves in the south-east corner of the first floor and the eaves of the northern pavilion. The minor breach in the respective DCP controls do not result in any unreasonable impacts on neighbouring properties or add to the bulk and scale of the development and have been assessed as acceptable. These issues are discussed in detail under Clause B1 (wall height) and B3 (side envelope) of this report.

- **Overshadowing and excessive 5.2 m height of side southern boundary fence.**

Comment

The setback of the dwelling to the southern and eastern boundary has been increased and the height, bulk and massing of the southern pavilion reduced to ensure that the proposal complies with the solar access requirements of the DCP. As noted above, the proposed southern fence has been amended from a 1.8 m timber fence to a 1.2 m high see through safety fence which will ensure that solar access impacts of the boundary treatment are minimised.

Hourly elevational shadows diagrams in plan and elevation were submitted for revision D which illustrated the design achieved compliance with clause D6 (access to sunlight). The current amended design, revision E, will further minimise solar loss to the southern property. Amended shadow diagrams have been submitted which demonstrates that the 50% of the private open space to the neighbouring site is retained for 3 hours between 9 am and 3 pm on June 21. Clause D6 does not specifically require the protection of solar panels, nonetheless, it is noted that the additional shadow will only be cast in the roof of No. 29 Beach Road from 3pm on June 21 the roof will remain in sunlight between 9am and 12pm June 21. It is also noted that due to the east west orientation of the site the proposal will not overshadow Fox Reserve to the immediate east.

The original proposal included the installation of a 1.8 m timber fence above the existing sandstone wall along the southern boundary. In order to address concerns relating to the visual impact of the fence and potential over-shadowing impacts to the southern neighbour the fence has been amended to a see through 1.2 m high steel fence with narrow 16 mm vertical rods spaced 100 mm apart. The amended fence will ensure that safety is maintained in compliance

with the BCA while minimising any perceived visual impacts of the fence from No 29 and 35 Beach Road and overshadowing.

As noted above a condition requires the installation of a 1.6 m high privacy screen along the south-west boundary for a length of 12 m and set back 0.9 m from the existing stone wall. Additional shadow diagrams have been submitted which confirm that the 1.6 m privacy screen will not give rise to any additional shadow impacts to neighbours. This is discussed in detail under Clause D6 (access to sunlight) of this report. Refer to discussion under Clause D6 (access to sunlight) and D15 (side and rear fences) WDCP contained within this report.

- **Structural adequacy of excavation, retaining wall and stone wall. Excessive excavation requirement for a dilapidation report.**

Comment

A geotechnical report has been submitted with the DA which makes recommendations for managing the excavation to ensure that there will not be an increase in the risk of instability to adjoining sites. This include the control of stormwater, the provision of adequate shoring measures (if required), vibration measures, inspections and monitoring, retaining walls and foundations and the requirement for a geotechnical verification.

The geotechnical report and DA have been reviewed by Council's Engineer who offers no objection to the proposal subject to conditions including conditions relating to structural adequacy and verification. In addition, conditions are recommended requiring dilapidation reports to be prepared before and after construction work in respect of No 29 and 45 Beach Road. Refer to discussion under clause 6.2 (earthworks) of the WLEP and clause C7 (excavation and landfill) of the WLEP contained within of this report.

- **Construction impacts noise, vibration.**

Comment

Conditions are included in the recommendation of the geotechnical report relating to vibration. These include:

Vibration - "Vibration levels are controlled by rock strength and the size of the rock hammer used to excavate the material, therefore if medium or higher strength sandstone is encountered and hydraulic rock hammers are used, precautions will need to be put in place to limit site vibration levels. Given the limited access for larger excavation equipment it is likely that small hand held equipment will be used. Consideration could also be given to hydraulic rock splitting techniques to limit vibration associated with excavation of medium and high strength sandstone. A maximum peak particle velocity of 10 mm/sec is recommended by AS 2187 Explosives Code for houses and low rise residential buildings and this is the peak particle velocity limit recommended for this site (unless otherwise specified by Council).

If medium or higher strength bedrock is encountered, and hydraulic hammer equipment is used then it is suggested that a vibration monitor be set up onsite to check that vibration levels (peak particle velocity levels) are kept below the recommended peak particle velocity. Although a peak particle velocity of 10 mm/sec is recommended by the relevant Australian Standard, experience has shown that cosmetic damage to masonry structures may occur with peak particle velocities of less than 10 mm/sec. If vibration levels exceed 5 mm/sec cosmetic damage to neighbouring masonry structures may result. If the neighbouring structures are of significant age or show signs of foundation movement, then vibration levels should be kept below 3 mm/sec."

Standard conditions are recommended to ensure demolition and excavation only occurs between the hours of 8 am and 5 pm Monday to Friday.

In addition, as the pool plant is located within the basement it is not anticipated that there will be acoustic impacts to neighbouring properties from this noise source. Conditions are included requiring further details of the air conditioning condenser units which will require that the AC units are positioned away from neighbouring properties to protect acoustic privacy and the frontage of the site to protect the scenic quality of the area..

- **Stormwater Management issues.**

Comment

The application has been reviewed by Council's Engineer who raise no objections to the proposal subject to conditions relating to stormwater. The conditions recommended include some of the conditions requested by the objectors such as the requirement for the certification of stormwater.

- **Misleading and inaccurate documentation including details of ground levels.**

Comment

As discussed elsewhere in this report, the documentation and plans have been amended to correct the RLs to the southern boundary and around the pool area. Other inaccuracies with the plans have also been corrected.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The Arborist's Report indicates that 5 trees are to be removed to accommodate the proposed works (Trees 2, 3, 6, 7 and 11). The Tree Protection and Removal Plan in the Landscape drawing package indicates one additional tree (Tree 5) to be removed.</p> <p>In assessing the trees to be removed, it is apparent that Tree 7 is located on the adjoining property at No. 45 Beach Road. As such, approval to remove cannot be granted without the owner's consent which hasn't been sighted.</p> <p>Tree 2 is located within the road reserve and will be affected by the new driveway crossover. As it is a relatively young tree and adjacent to electricity wires, no objections are raised to its removal.</p> <p>Tree 5 is located within the proposed front private open space area and is being removed to enable an open grassed setting surrounded by gardens. The tree is relatively young and no objections are raised to its removal in consideration of the compensatory tree planting proposed in the Landscape Plans.</p> <p>The Landscape Plans indicate graphically the planting of 16 trees around</p>

Internal Referral Body	Comments
	<p>the property. This is supported to replace the canopy removed for development.</p> <p>Two significant trees are located in the public reserve to the east of the development, close to the boundary. Trees 12 and 13 are mature <i>Araucaria heterophylla</i> (Norfolk Island Pines).</p> <p>The plans indicate that works will occur within the Tree Protection Zone (TPZ) of both the trees. The impacts on Tree 12 are relatively minor and can be accommodated with supervision of a Project Arborist and the tree protection recommendations in the Arborist's Report.</p> <p>The impacts on Tree 13 are more significant with works proposed within the theoretical Structural Root Zone (SRZ) of the tree.</p> <p>Whilst the basement level has been designed to be setback from the tree, it is evident from the Architectural, Landscape and Stormwater Plans that excavation is proposed at ground level within a significant portion of the tree's TPZ and SRZ.</p> <p>It is recognised that the existing dwelling is located very close to Tree 13, however comparison of existing levels and proposed levels indicates that the new level in the rear yard will be approximately 800mm below the existing levels.</p> <p>Photo 1 below indicates the relationship between the existing dwelling and Tree 13. It is recognised that the levels shown on the Survey Plan (Fig. 1 below) are raised. Excavation below the level of the existing terraces will however still be required to achieve the levels proposed on the plans provided.</p> <p>This is considered to be a significant impact on the TPZ and SRZ of Tree 13.</p> <p>In order to minimise the impacts on the tree to an acceptable level, it is recommended that the ground levels immediately below the terraces and existing dwelling within the TPZ of Tree 13 be maintained and any reshaping of the landform to provide for water diversion and marrying-in to new floor levels occurs outside of the TPZ of Tree 13. This would be still be required to be undertaken under the supervision of the Project Arborist and responding on site to the below ground conditions once the terraces and existing building have been removed.</p> <p>Recommended conditions have been included addressing the issues raised above.</p> <p>Subject to the conditions as recommended, no objections are raised approval with regard to landscape issues.</p>

Internal Referral Body	Comments
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Photo 1. Existing dwelling adjacent to Tree 13.
(Source: Arborist's Report Botanics Tree Wise Men P.12)

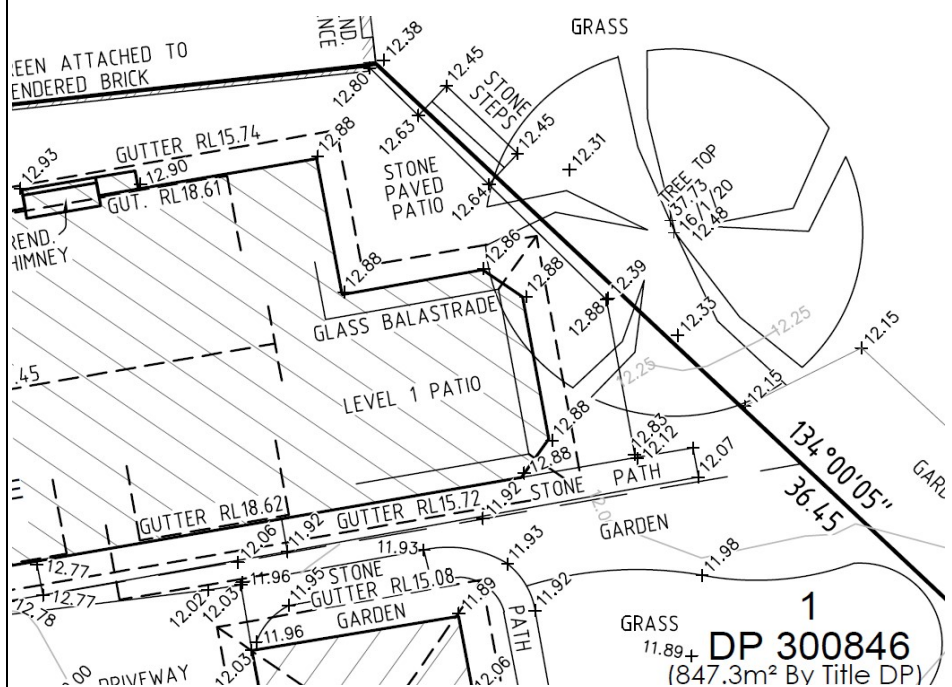
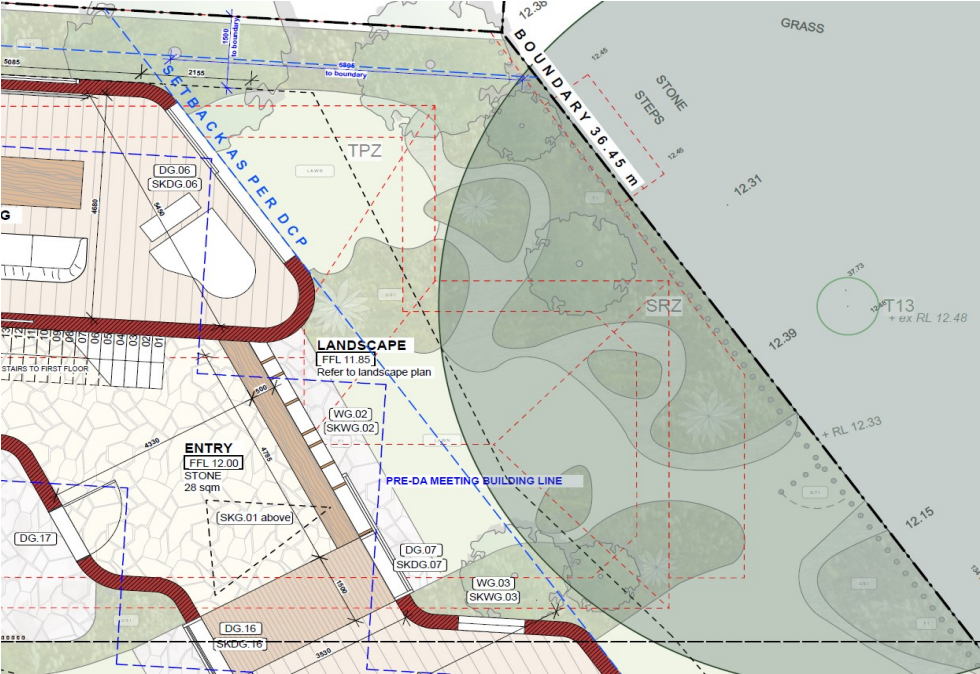


Fig.1 Extract from Survey Plan showing existing dwelling and levels
adjacent to Tree 13

Internal Referral Body	Comments
	 <p>Fig.2 Extract from Ground Floor Plan showing outline of existing building, proposed building and levels adjacent to Tree 13.</p>
NECC (Bushland and Biodiversity)	<p>The development has been assessed against the Warringah DCP control E4 Wildlife Corridors. The submitted plans generally satisfy the controls, and the proposed development and landscaping will not significantly impact the current ecological function of the corridor.</p>
NECC (Coast and Catchments)	<p>The proposal has been assessed against the following:</p> <ul style="list-style-type: none"> • The Coastal Zone Management Plan for Collaroy-Narrabeen Beach and Fishermans Beach 2016 • Warringah Local Environment Plan 2011 • Warringah Development Control Plan 2011 • State Environmental Planning Policy (Coastal Management) 2018 <p>Based on the information provided and an internal assessment the proposal is deemed to comply with each of these.</p> <p>Therefore the proposal is supported for approval without conditions.</p>
NECC (Development Engineering)	<p>No objections are raised to the proposed development, subject to conditions.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against:</p> <p>Warringah Development Control Plan 2011</p> <p>C4 - Stormwater</p> <p>C5 - Erosion and Sedimentation</p> <p>E8 - Waterways and Riparian Lands</p> <p>PL 850 - Water Management Policy</p> <p>8.1 - Stormwater Quality</p> <p>8.2 - Groundwater Management</p>

Internal Referral Body	Comments
	<p>8.3 - Erosion, Sediment and Pollution Controls</p> <p>The applicant has proposed a number of treatments designed to improve the water quality discharged from the property and capture coarse sediments and organic matter that satisfy the water quality requirements for the development.</p> <p>Sediment and erosion controls must be installed prior to any demolition on site and maintained until all work is complete and groundcover re-established.</p> <p>The development is not likely to impact the hydrology of the Coastal Environment Zone adjacent to the site.</p>
Parks, reserves, beaches, foreshore	<p>The subject property abuts The Basin reserve on its eastern boundary. Impacts on the reserve have been considered via the building setback and open fencing style. Sedimentation control has been conditioned to ensure that the adjacent foreshore reserve is not negatively impacted by construction activities.</p>
Strategic and Place Planning (Urban Design)	<p><u>Original comments 29 April 2020</u></p> <p>The proposal cannot be supported for the following reasons:</p> <ol style="list-style-type: none"> 1. The 6m rear building setback to the south-eastern corner of the site has been breached with the proposed elevated deck with cantilevered roof. The proposed living and deck area which is generous in proportion should be redesigned to comply strictly with the rear setback. This will minimise the visual impact of the building when viewed from the eastern adjoining public reserve and southern neighbour. 2. The reduced building bulk with complying rear setback in the south-eastern corner will also minimise shadow and builtform impact to the southern neighbour. 3. Due to the lower site level of the southern neighbour, the proposed builtform even though, in compliance with the side boundary envelope control, will have a 'heightened' effect. Therefore, overlooking/ privacy issues should be addressed sensitively. Privacy screens proposed should be integrated as part of the architectural facade design. A wider landscape buffer to soften the visual impact and reduce shadow cast could also be considered. <p><u>Revised comments 16 July 2020 on amended drawing revision C</u></p> <p>The non-compliance of side envelope breach on the southern boundary is not supported as it will cast additional shadows. Due to the slope of the land, the built-form impact will also be 'amplified' to the southern neighbour. There could also be issues of view corridors being blocked by the non-complying part of the proposal.</p> <p><u>Revised comments 30 July 2020 on amended drawings revision D</u></p> <p>Yes. Much better! Interesting shape outcome to achieve side boundary</p>

Internal Referral Body	Comments
	envelope compliance. Neighbour at the rear gets more water view and neighbour at the low side boundary gets more sun and less building impact. Happy to support amended design.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1063352S_02 dated 20 August 2020).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. A response was received on 4 March 2020 advising that Ausgrid have no objections to the proposal subject to compliance with the relevant standards and Codes. A condition is included in the recommendation requiring compliance with Ausgrid's referral.

SEPP (Coastal Management) 2018

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

14 Development on land within the coastal use area

(1)

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

Comment:

The proposal has been designed to ensure that the development will not adversely impact on access to the foreshore, beach or headland or cause overshadow or wind funneling to the foreshore. The proposal has been amended to minimise impacts on views from public places to the foreshore. The upper level elevated deck, which protruded beyond the 6m rear eastern (headland) setback, has been deleted and the roof over the entrance has been simplified to be a lightweight structure constructed of non reflective material.

Given the elevated location of the site on top of the headland the dwelling will be visible from the coastal park and Fisherman's Beach to the south. It is noted that the existing dwellings can be observed on approach to the site from the south and from Fishermans Beach refer to image below. The massing of the proposed southern pavilion has been reduced with an increased setback from the southern boundary, a reduction in height and a change in the roof design and materials including a lightweight glassed angled roof feature over the ground floor kitchen. The southern elevation of the upper floor is articulated with angled window features to reduce any perceived visual impact of bulk. The existing and proposed landscaping will help soften the visual bulk of the proposal with mature Norfolk Pines trees remaining the visual backdrop to the headland.



Existing view from Fishermans Beach



Photomontage showing view of proposal from Fishermans Beach

As a result, the amended proposal has been assessed as complying with clause 14(1) (a) (iii) and the amended design will reduce any bulk, scale and size of the development as viewed from headland Park will ensure that the visual amenity and scenic quality of the headland is protected.

The proposal is unlikely to impact on the cultural and built heritage of the area and Council's Aboriginal Heritage Officer has confirmed that there are no aboriginal heritage significance has been identified on the site or in close proximity to the site.

Council's Engineers have raised no issues with the excavation of the basement on the headland and conditions are recommended to ensure the structural adequacy of excavation work to ensure that there will not be any unreasonable impacts to the headland.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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

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

Comment:

The site is set back approximately 14 m at its closest point (the south-east corner) to the stairs leading from Fox Reserve to the Fishermans Beach. Given the setback from the foreshore the application has been assessed by Council's Coast and Catchment Unit as acceptable who confirm that the proposal satisfied the Coastal Management SEPP and is unlikely to increase the risk of coastal hazards.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.6m	1.1%	No

Compliance Assessment

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

Detailed Assessment

4.3 Height of buildings

There is a difference of opinion between the objectors and the applicant as to the calculation of "existing ground level" in the area around the pool within the south east section of the site which has implication in relation to the developments ability to comply with the maximum height development standard. The objectors maintain that the existing ground level around the pool detailed in the latest set of drawings, Revision E, is still incorrect which results in a breach in the height limit, the wall height and the building envelope. The objectors maintain that the applicant has miss-interpreted the *Stamford v City of Sydney* judgement which states:

"to apply a ground plane across the site drawn from ground levels at the boundaries of the site. This ensures a practical application of the height standard."

In the *Stamford v City of Sydney* case the Stamford Hotel building, occupied the entire site and the Commissioner agreed with the City's which argued that the proposed height should be measured from the ground level of the site where known and from the footpath level at the site boundaries extrapolated across the site, as this would reflect the sloping topography of the land. The subject site No. 39 and 41 Beach Road is different in that it is not entirely built upon and survey points have been obtained at various locations across the site which confirm that with the exception of the south-east corner the site is generally level.

The Dorsen Buckle submission number six (6) references four (4) points where the existing ground level is incorrect. These are discussed in detail below:

- Point J (South -east corner of level 1 / edge of balcony) - The amended drawings (revision E) refers to the existing ground level at this point being RL 9.95 extrapolated from points RL 9.56 and RL 11.59. The submission suggested an RL of 9.56 (base of the retaining wall). The RL of 9.56 provided by the applicant is reasonable given that Point J is located to the north of the existing pool deck / paving area and the two points taken to calculate the extrapolated level are the logical reference points extracted from the survey. Based on the ground level of RL 9.95 and the maximum building height at point J being RL 17.97 the proposed building height is 8.4 m which is compliant with the 8.5m height development standard. Given the variation in levels within the south-east section of the site as a result of earthworks associated with the pool the existing ground level is taken to be the lower level of RL 9.56 as suggested by the objectors, in doing this any doubt with respect of the validity of the consent is avoided. Based on the lower RL of 9.56 the proposed building height at point J would be 8.41 m which complies with the maximum 8.5 m building height. It is noted that the objectors suggested that there is a 0.46 m breach of the control which was based on a building height of RL 18.52.
- Point J2 (SE corner of the level 1 roof) - The amended drawings refer to the existing ground level being RL10.6 as extrapolated from points RL 9.56 and RL 11.59. The objectors note that RL 9.56 (the base of the retaining wall) should be the correct level. The RL of 10.6 provided by the applicant is considered to be reasonable given that Point J2 is located to 1.7 m north of the pool deck / paving area and the two points taken to calculate the extrapolated level are the logical reference points extracted from the survey. Based on the ground level of RL 10.6 and the proposed max height of RL 18.17 the proposed building height is 7.57m which is compliant with the 8.5m height development standard. Again in order to avoid doubt with the interpretation of of the existing ground level the lower level of RL 9.56 as suggested by the objectors is used to calculate the height. Based on the lower RL of 9.56 the proposed building height at point J2 is 8.61 m resulting in a 0.11 m breach of the height limit (1.1%), not 0.66 m as suggested by the objectors (based on a building height of RL 18.72).
- Point N (southern corner of the 1st floor triangular projecting window to the master bedroom) - The amended drawings refers to the existing ground level being RL 9.85 extrapolated from points RL 9.56 and RL 11.31. The submission suggested an RL of 9.56 (base of the retaining wall). The RL of 9.85 provided by the applicant is considered to be reasonable given that Point N is located to the north of the pool deck / paving area and the points taken to calculate the extrapolated level are the logical reference points. Based on the ground level of RL 9.85 and the proposed max height of RL 17.19 the proposed building height is 7.34 m compliant with the 8.5 m height development standard. Again for the purpose of avoiding doubt using the lower level of RL 9.56 suggested the objectors the proposed building height at point M is calculated as 7.63 which complies with the 8.8 m height limit. It is noted that the objectors calculated a breach of 0.28 m based on a building height of RL 18.34.

- Point M (south-east corner of the kitchen window) - The amended drawings refers to the existing ground level being RL 8.3 . Point M sits directly above the pool and RL is the pool base, both the objectors and applicant now agree on the existing ground level for point M. Based on the ground level of RL 8.3 and the proposed max height of RL 14.19 the proposed building height of 5.89 m is compliant with the 8.5 m height development standard.

In summary, based on the existing ground level suggested by the objectors in the area around the pool of RL 9.56 there is one minor 0.1 m breaches in the height control which relate to the point J2 the south east corner of the the roof. Using the lower level the breach is not as significant as suggested by the objectors as the amended design has increased the setbacks and reduce the height of the southern pavilion. The applicant has lodged an amended clause 4.6 variation to justify the exception to the development standard. A detailed assessment of the Clause 4.6 variation is discussed below.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.6m
Percentage variation to requirement:	1.1%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to*

justify the contravention of the development standard by demonstrating:

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not

defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

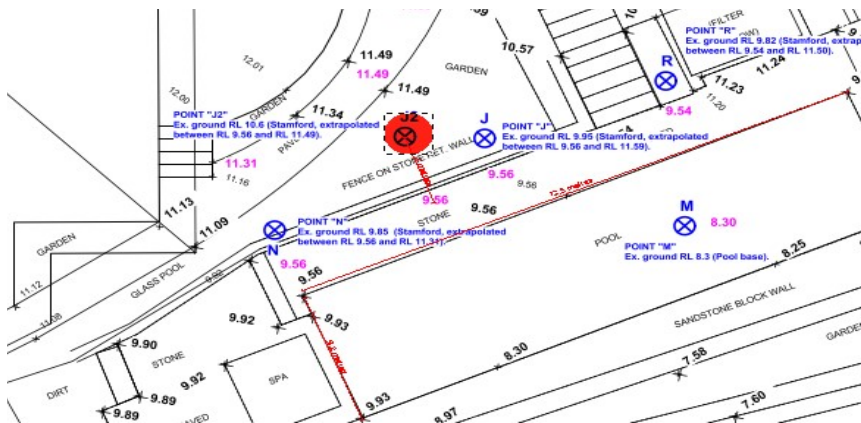
As discussed under Clause 4.5 there is a 0.1 m breach in the height limit at point J2 (refer to drawing 105 and 106). Point J2 relates to the south-eastern corner of the roof to the level 1 master bedroom. The breach results from height as calculated assuming the existing ground level at point J2 is RL 9.56 as suggested by the objectors. The height of the building at this point is RL 18.17 resulting in a building height of 8.61 m.

The applicants written request argues, in part:

- *The 0.11 m height encroachment is not visible from Beach Road, nor readily seen from the foreshore or neighbouring residential properties. The height encroachment has no impact on streetscape or the character of the locality.*
- *The height encroachment also has no impact on neighbour views, outlook, privacy, or solar access being setback 8.8 m from the closest boundary.*
- *The height encroachment only arises because of the excavated level of the existing platform around the swimming pool below the southern side of the proposed new dwelling.*

Comment

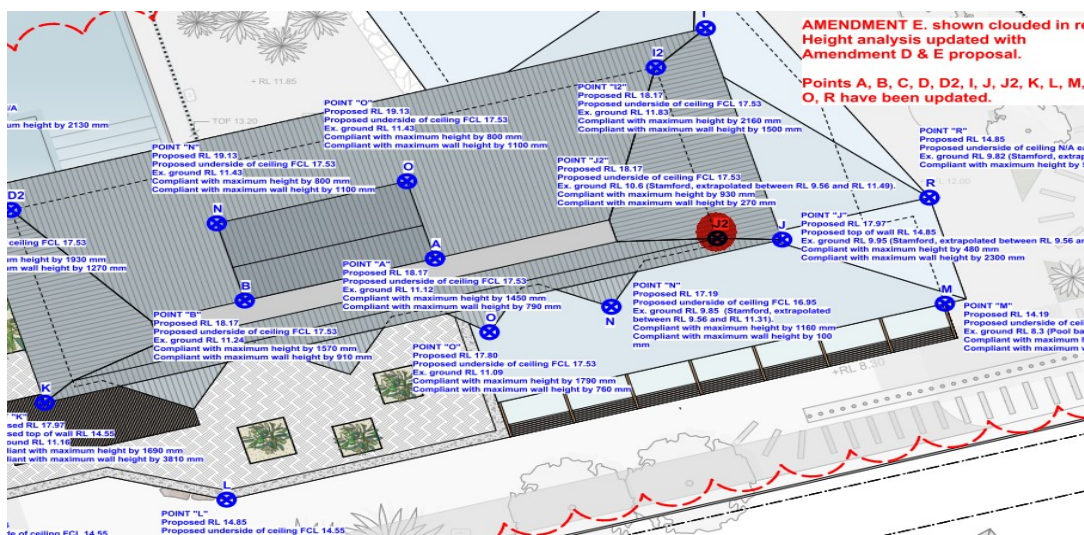
Point J2 is located approximately 1.7 m to the north of the pool paved area. It is noted that the pool paved area has been surveyed at RL 9.56 which is the level which the objectors suggest should be applied as the existing ground level at point J2. Refer to images below.



Extract / analysis from survey showing point J2



Point J2 located approximately 1.7 m north of the pool deck / platform RL 9.56.



Point J2 mapped on roof plan

Calculating the height based on the existing ground level of RL 9.56 will result in a minor 0.1 m (1.1%) breach of the height limit. The minor breach will not in itself result in an unreasonable amenity impacts to surrounding properties by way of overshadowing or view loss. In addition, the minor breach will not result in unacceptable visual impacts in terms of excessive height, bulk and massing.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

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

Comment:

Although the proposed dwelling is large it complies with the built form controls with the exception of a minor 0.1 m breach in the height and a minor breach in the wall height and envelope controls. The height and scale of the dwelling, as amended, is comparable to recently constructed two storey dwellings in the surrounding area. The minor 0.1 m breach of the height limit will have no perceivable impact on the overall density of the development. The contemporary dwelling maintains a predominate two storey built form which generally sits well below the 8.5 m height limit. The height, bulk and scale of the development has been amended to respect the residential amenity of the southern neighbours. The facades are modulated to break up the perceived bulk and the dwelling setback from the boundaries in a landscape setting to help soften the built form.

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

Comment:

The south-east corner of the roof that breaches the height limit is setback 8.8 m from the southern boundary. The minor 0.1 m breach in the height limit to the south east corner of the southern pavilion will not in itself cause unreasonable impacts to neighbouring properties in terms of view loss, privacy or solar access.

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

Comment:

The minor 0.1 m breach in the height limit will not in itself result in an adverse on the scenic quality of the coastal environment. The breaching element is setback approximately 15 m from the foreshore boundary.

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

Comment:

The minor 0.1 m breach in the height limit will not in itself result in visual impacts of the development when viewed from Fox Reserve Headland Park or Fishermans Beach and public areas to the south.

Zone objectives

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

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

Comment

The proposed new dwelling maintains the existing low density residential environment of the locality and provides a contemporary dwelling that responds to the site constraints.

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

Comment

The proposal is for a residential dwelling accordingly objective 2 is not relevant.

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

Comment

The proposed development provides sufficient landscape open space in accordance with the WDCP requirements. Conditions require amended landscape plans to ensure suitable species selection along the boundaries. In addition, a condition requires no earthwork within the TPZ to tree 13 (a Norfolk Pine tree) to ensure the protection of the mature significant trees which are significant features in the adjoining Fox Reserve Headland Park.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

6.2 Earthworks

Before granting development consent for earthworks, the consent authority must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
- (b) the effect of the proposed development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.*

Comment

Issues have been raised in the submission about the extent of excavation and potential adverse impacts on adjoining land and the natural environment. The proposal includes excavation to a depth of approximately 4.6 m required for the construction of the basement. The application is supported with a Geotechnical report prepared by Taylor Geotechnical which confirms:

"The results of the geotechnical investigation indicated that there is no evidence of recent instability (over the design life of the current developments) and that currently there are no landslide hazards that would pose an unacceptable risk to property or life. It is expected that the proposed development will be constructed in a manner that will not increase the risk of instability to this or any adjoining sites. This will involve the control of stormwater and provision of adequate shoring measures (if required) for proposed excavations".

The report makes recommendations for managing the excavation to ensure that there will not be an increase in the risk of instability to adjoining sites. This include the control of stormwater, the provision of adequate shoring measures (if required), vibration measures, inspections and monitoring, retaining walls and foundations and the requirement for a geotechnical verification.

The report and DA have been reviewed by Council's Engineer who offers no objection to the proposal subject to conditions including the following conditions relating to structural adequacy and verification.

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

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

Subject to the conditions recommended by Council's Engineer and compliance with the recommendation of the Taylor Geotechnical report, the earthworks are unlikely to result in detrimental effect on, existing drainage patterns and soil stability in the locality or the amenity of adjoining properties. As such, the proposal has been assessed as complying with Clause 6.2 of the WLEP.

6.4 Development on sloping land

The majority of the site is level, with a portion towards the south/south-east that slopes drastically at an average gradient of 21.9 degrees. 17.29% of the lot slopes more than 15 degrees and is noted as Area E on Council's Landslip Risk Mapping, 0.59% of the lot slopes 5 to 15 degrees and is noted as Area D on Council's Landslip Risk Mapping.

The objectives of the clause are:

- (1) (a) 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,*
- (b) to ensure the impacts of storm water runoff from development on or near sloping land are minimised so as to not adversely affect the stability of the subject and surrounding land,*
- (c) to ensure subsurface flows are not adversely affected by development so as to not impact on the stability of existing or adjoining land.*
- (2) This clause applies to land shown as Area A, Area B, Area C, Area D and Area E on the LandslipRisk Map.*
- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*
 - (b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*
 - (c) the development will not impact on or affect the existing subsurface flow conditions.*

Comment

As noted above, a Geotechnical report has been submitted that notes that the results of the geotechnical investigation indicate that *"there is no evidence of recent instability (over the design life of the current developments) and that currently there are no landslide hazards that would pose an unacceptable risk to property or life. It is expected that the proposed development will be constructed in a manner that will not increase the risk of instability to this or any adjoining sites. This will involve the control of stormwater and provision of adequate shoring measures (if required) for proposed excavations"*.

The Geotechnical Report confirms that the Assessment of the site has been made in accordance with the methods and requirements as outlined by the Australian Geomechanics Society Landslide Taskforce, Landslide Practice Note Working Group paper titled 'Practice Note Guidelines for Landslide Risk Management 2007'.

The proposal has been assessed by Council's Development Engineers who raise no objections to the proposal subject to conditions relating to stormwater, structural design and adequacy. In summary, the proposal has been assessed as meeting the objectives of the clause. Subject to engineering conditions and compliance with the recommendations of the geotechnical report it is unlikely that the development will result in landslides or cause significant detrimental impacts because of stormwater discharge or not impact on or affect the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	Southern pavilion 7.4 m *(relating to the pop out skylight) Central pavilion 3.5 m Northern pavilion 6.3 m	2.7% N/A N/A	No Yes Yes
B3 Side Boundary Envelope	4m	Southern Pavilion - Level 1 - 0 - 0.5 m breach in height for a length of 2.1 m which relates to the south-east corner of the roof over the east facing deck. Ground level - 0 - 0.6 m breach in height for a length of 3.9 m which relates to the eaves in the area above the ground floor WC. Central Pavilion - complies Northern Pavilion - the eaves on the northern elevation project through the envelope resulting in a 0.3 m breach for 23 m in length.	Refer to details N/A Refer to details	No Yes No
B5 Side Boundary Setbacks	0.9m	Northern pavilion 1.5 m -2.34 m Central Pavilion 11.3 m - 16.5 m Southern pavilion 7.7 m to 11 m to the rear wall WC block 1.2 m Pool 0.9 m to 2.5 m	N/A N/A N/A N/A N/A	Yes Yes Yes Yes Yes
B7 Front Boundary Setbacks	6.5m	13.7 m to Beach Road *zero to the driveway / access ramp to the basement	N/A	Yes
B9 Rear Boundary Setbacks	6m	6 m - 8.1 m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	47.5% 730.7 sqm	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

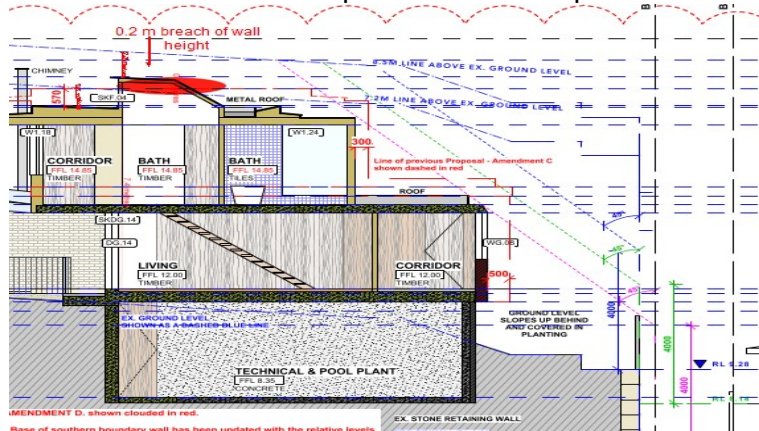
B1 Wall Heights

Clause B1 requires:

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

Comment

The pop out bathroom skylight will result in a 0.2 m breach of the wall height for a length of 1.5 m, refer to section below which depicts the non-compliant element.



Skylight above bathroom breaches the 7.2m wall height by 0.2m

Exceptions

The clause allows for the control to be varied on sites with slopes greater than 20% within the building footprint (measured at the base of the external walls), provided the building:

*does not exceed the 8.5 metre height development standard;
is designed and located to minimise bulk and scale; and
has a minimal visual impact when viewed from the downslope sides of the land.*

Merit Assessment.

The clause allows for exceptions on sites with a slope greater than 20% within the building footprint. Due to the sloping nature of the southern portion of the site and the excavated pool the existing ground level varies. The minor 0.2 m breach in the wall height relating to the skylight in the southern pavilion will not itself result in adverse environmental impacts by way of visual impact, view loss or over shadowing. The skylight sits 0.8 m below the 8.5 m building and height and on merit the the minor breach is supported.

B3 Side Boundary Envelope

Clause B3 requires:

Buildings on land shown coloured on the DCP Map Side Boundary Envelopes must be sited within a building envelope determined by projecting planes at 45 degrees from a height above ground level (existing) at the side boundaries of:

- 4 metres

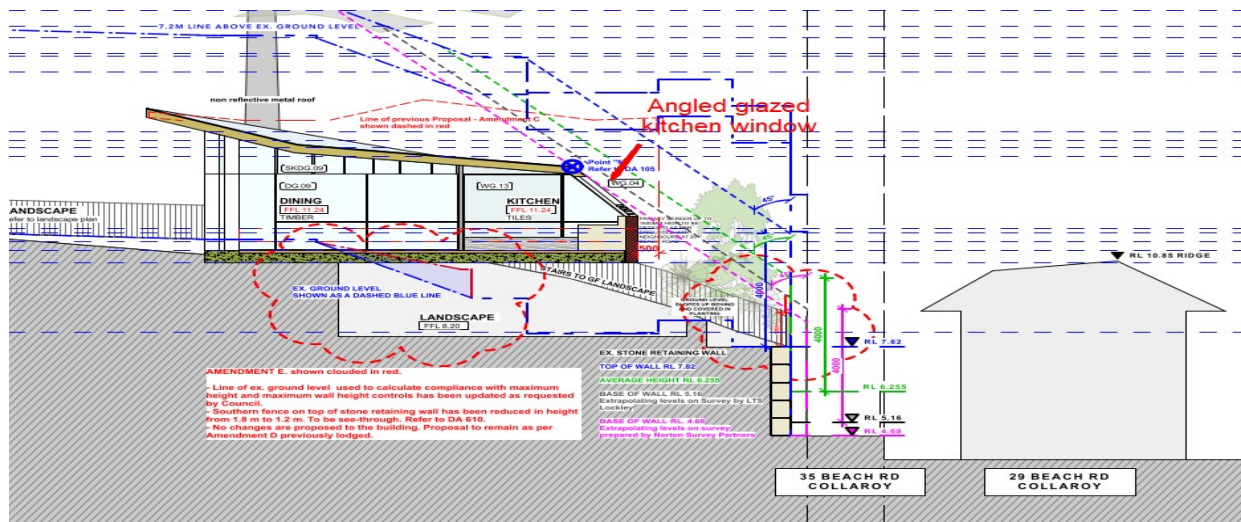
as identified on the map.

2. On land within the R3 Medium Density Residential zone, above and below ground structures and

private open space, carparking, vehicle access ramps, balconies, terraces, and the like shall not encroach the side boundary envelope.

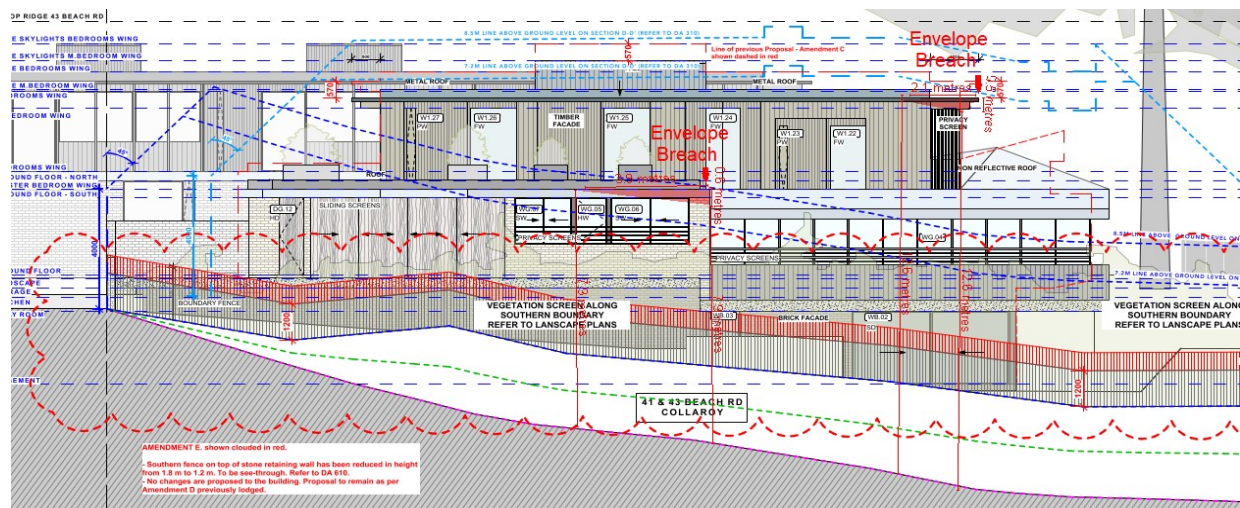
Comment.

There is significant slope of the site to the southern boundary which results in a level difference of approximate 3 m to the southern boundary. Earthworks to construct the pool in the south-east corner of the site have also altered the original ground level. The proposal has been amended to correctly identify the RLs to the southern boundary and around the pool area and address the non-compliance with the side envelope control. The modification includes an increase in the setback of the southern pavilion with an amended setback of 3.9 m at ground level and between 7.4 m and 8.6 m to the first floor. In addition, the height has been reduced, in part, by 570mm. The design of the ground level kitchen window has also been modified to a glazed angled roof to comply with the side envelope control. Refer to images below.

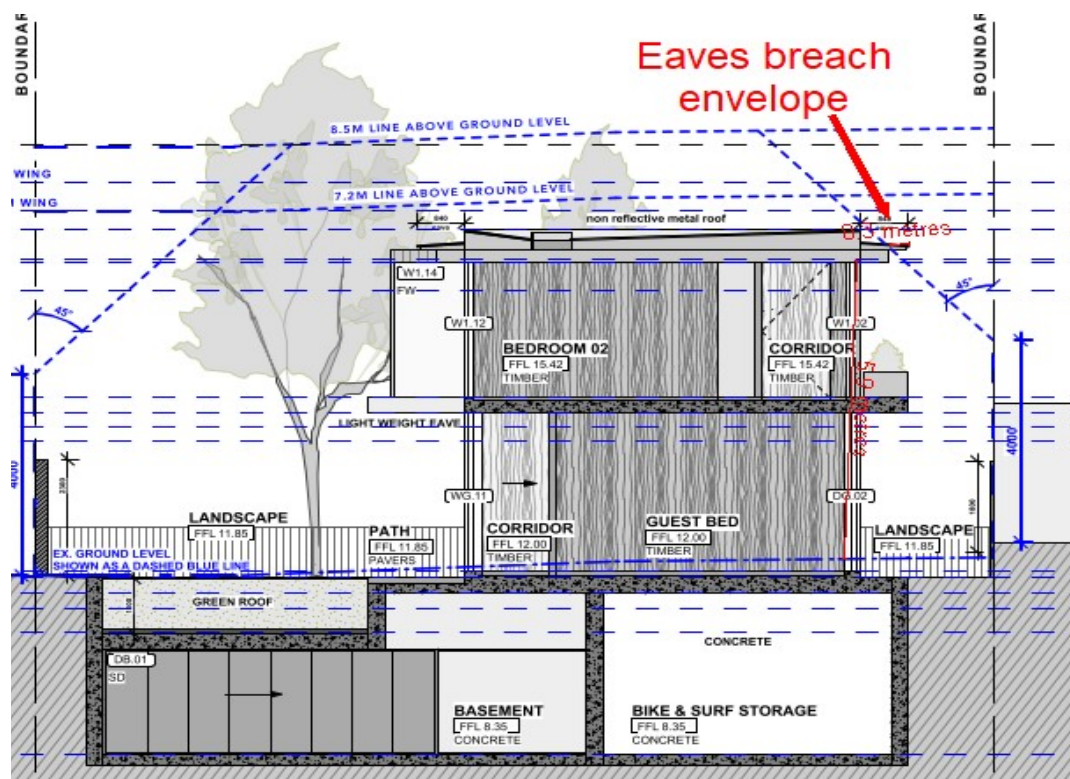


As a result of the modifications the amended proposal generally complies with the side envelope control with the exception of three minor breaches, namely:

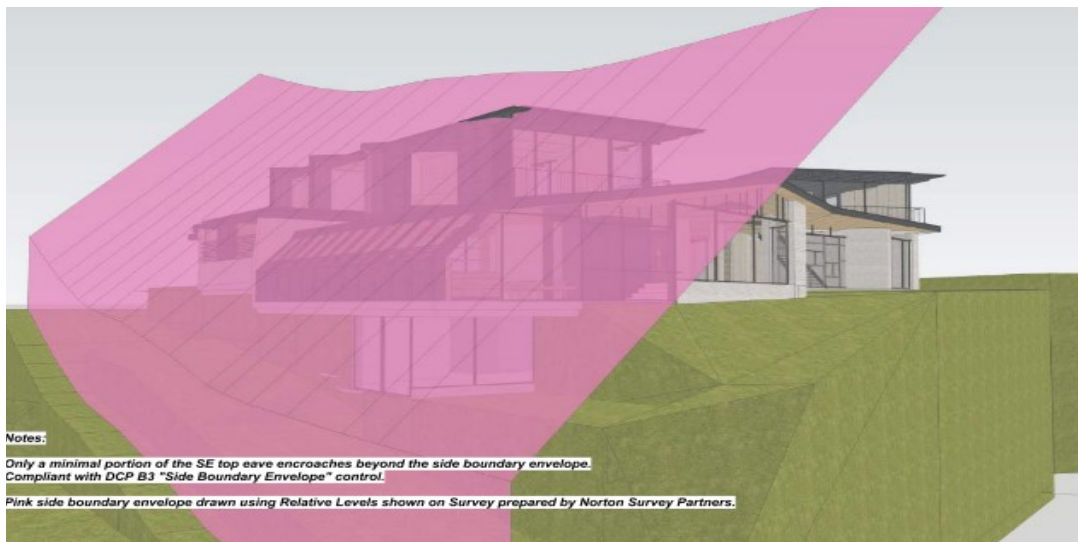
- 0 - 0.5 m breach in height for a length of 2.1 m which relates to the south east edge of the roof over the deck to the first floor master bedroom.
- 0 - 0.6m breach in height for a length of 3.9 m which relates to the eaves above the ground floor WC.
- 0.3 m breach in height for a length of 32 m which relates to the eaves of the northern pavilion on the northern elevation. Refer to images below.



Southern elevation showing the breach of the side envelope.



Northern pavilion - eaves breach envelope



3D image of side envelope control (source Virginia Kerridge).

The objectives of the clause require

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

Comment

The amended design ensures that the development will not be visually dominant, by virtue of its height and bulk, on the character of the area. The minor breach of the eaves and the corner section of the roof over the east facing first floor deck will not result in any unreasonable visual impacts on the surrounding area.

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

Comment

As demonstrated with the amended shadow diagrams the proposal fully complies with the solar access requirements of the WDCP. The amended proposal will ensure that at least 50% of the private open space to the neighbouring properties retain access to daylight. The separation between the southern pavilion exceeds the minimum 0.9 m side set back DCP requirements. The ground floor is set back 3.9 m from the southern boundary and the upper floor between 7.2 m, 7.4 m and 8.6 m from the southern boundary. As such, the spatial separation is considered to be acceptable. In order to ensure visual privacy is maintained to the neighboring properties conditions requires fixed and angled privacy screens to be installed on the angled kitchen windows up to a height of 1.6 m and the north facing bedroom and living room windows and all decks. In summary, the minor breach of the envelope will not result in any unreasonable impacts on access to light or privacy between buildings.

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

Comment

As discussed above, there is a significant variation in the topography along the southern boundary. The amended proposal responds to this site constraint / topography modifying the design of the southern pavilion to increase the side setback at both ground and first floor and introducing an angled window to the kitchen to correspond to the side envelope control.

C7 Excavation and Landfill

Clause C7 requires:

- 1. All landfill must be clean and not contain any materials that are contaminated and must comply with the relevant legislation.*
- 2. Excavation and landfill works must not result in any adverse impact on adjoining land.*
- 3. Excavated and landfill areas shall be constructed to ensure the geological stability of the work.*
- 4. Excavation and landfill shall not create siltation or pollution of waterways and drainage lines, or degrade or destroy the natural environment.*
- 5. Rehabilitation and revegetation techniques shall be applied to the fill.*
- 6. Where landfill is necessary, it is to be minimal and shall have no adverse effect on the visual and natural environment or adjoining and surrounding properties.*

Comment

Excavation

Issues have been raised in the submission about the extent of excavation and potential adverse impacts on adjoining land and the natural environment. The proposal includes excavation to a depth of approximately 4.5m for the construction of the basement car park and ancillary storage and playroom. In addition, the following areas have been identified as requiring fill:

- Area to the east approx 0.2m above existing ground level of landscape grading.
- Area to the west including 0.3m fill above existing ground level along the western boundary for landscape grading and approximately 0.8m fill above ground level for the outdoor dining area.

The proposal has been assessed as meeting the objectives of the clause as discussed below:

- *To ensure any land excavation or fill work will not have an adverse effect upon the visual and natural environment or adjoining and adjacent properties.*

The application is supported with a geotechnical report prepared by Taylor Geotechnical which notes that the results of the geotechnical investigation confirm that there is no evidence of instability or landslide hazards. The report makes recommendations for managing the excavation to ensure that there will not be an increase in the risk of instability to adjoining sites. This includes the control of stormwater, the provision of adequate shoring measures (if required), vibration measures, inspections and monitoring, retaining walls and foundations and the requirement for a geotechnical verification.

The geotechnical report, plans and supporting information have been reviewed by Council's Engineer who offers no objection to the proposal subject to conditions including conditions relating to structural adequacy and verification. In addition, conditions require pre and post construction dilapidation reports.

The minor fill to the east of the site for landscape works is considered acceptable as it will not result in unreasonable impacts on the visual and natural environment. The plans also indicate mild excavation approximately 0.6m below ground level within the vicinity of the TPZ for tree 13 located within the south east boundary. The earthwork within the TPZ is not supported as it has the potential to impact the Norfolk Pine tree. A condition has been included in the recommendation stating that no earthworks is permitted within the TPZ for tree 13.

A wall provided a screen to the western property at No. 39 Beach Road and a condition requiring a

fixed angled privacy screen along the southern boundary of the outdoor dining area in place of the sliding screen. Subject to the installation of suitable fixed privacy screen to the outdoor area it has been assessed that the earthworks required for the outdoor dining area will not result in unreasonable impacts on neighbouring amenity.

- *To require that excavation and landfill does not create airborne pollution.*

Conditions are recommended in the Geotechnical report to ensure the earthworks do not result in airborne pollution. In addition, Council's Engineer has recommended appropriate conditions.

- *To preserve the integrity of the physical environment.*

The earthworks will alter the physical environment, however, subject to conditions the proposal will not result in unacceptable impacts on the physical environment in terms of pollution or geological stability.

- *To maintain and enhance visual and scenic quality.*

The earthworks adjacent to the public domain on the eastern boundary of the site are relatively minor and will not affect the visual and scenic quality of the adjoining headland park.

C8 Demolition and Construction

Clause C8 requires:

All development that is, or includes, demolition and/or construction, must comply with the appropriate sections of the Waste Management Guidelines and all relevant Development Applications must be accompanied by a Waste Management Plan.

Comment

Submissions have been received regarding adverse impacts associated with the construction. A waste management plan submitted which has been assessed as acceptable. In addition, standard conditions require construction to occur between the hours of 7 am to 5 pm Monday to Friday and 8 am to 1.00 pm Saturdays. Demolition and excavation work is restricted to 8.00 and to 5.00 pm Monday to Friday.

D3 Noise

Clause D3 requires:

Noise from combined operation of all mechanical plant and equipment must not generate noise levels that exceed the ambient background noise by more than 5dB(A) when measured in accordance with the NSW Industrial Noise Policy at the receiving boundary of residential and other noise sensitive land uses.

Comment

Issues are raised in the submission regarding acoustic impacts from the use of the outdoor dining area on neighbouring amenity and it is request that an acoustic rated solid wall to be constructed adjoining the southern edge of the outdoor dining area in place of the sliding screens. The outdoor dining area is located 6.4 m from the southern boundary and approximately 16 m to the north-east corner of the rear elevation of No. 35 Beach Road. A solid wall is proposed along the western boundary which varies

in height between 2.1 m and 2.6 m. Given the setback of the deck to neighbouring properties and the solid wall proposed along the western boundary it is not anticipated that the use of the outdoor dining area to the proposed single dwelling will result in adverse acoustic impacts. As such, it is therefore unreasonable to request an acoustic wall along the southern boundary of the outdoor dining area in place of the sliding screen. In order to address potential visual privacy issues relating to the use of the outdoor dining area a condition requires a fixed angled privacy screen to be installed in place of the sliding screen.

The pool plant is proposed to be located within the basement. As such, it is not anticipated that the plant will result in adverse acoustic privacy impacts to neighbours. Conditions require additional details to be submitted and approved for the A/C condenser and compliance with the NSW Industrial Noise Policy.

D6 Access to Sunlight

- 1. Development should avoid unreasonable overshadowing any public open space.*
- 2. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.*

Comment

Amended shadow diagrams have been submitted which confirm that the amended proposal fully complies with the solar access provisions requiring 50% of the private open space of adjoining dwellings to received a minimum 3 hours of sunlight between 9 am and 3 pm on 21 June.

It is noted that concern has been expressed from neighbours regarding the overshadowing from the proposed 1.8 m timber fence on top of the sandstone wall along the southern boundary. Due to the level difference at the southern boundary a safety fence is required. In order to address solar access and visual bulk issues with regards to the original fence the applicant has amended the fence to a "see through open fence" comprising vertical steel 16 mm vertical rods. Amended shadow diagrams have been submitted which confirm that the proposed 1.2 m high safety fence will result in a minimal amount of additional soft shadow cast onto the No. 29 Beach Road. No additional shadow will be cast by the 1.6 m privacy screen to the south-west boundary. Despite the minor additional shadow cast by the safety fence the proposal remains compliant with the solar access controls.

Concern has also been expressed about additional shadow on the roof of No. 29 Beach Road affecting the solar panels. While there are no specific provision within Clause D6 relating to the protection of solar access to solar panels amended shadow diagrams in elevation show that the proposal will cast no additional shadow on the roof of No 29 at 9am on 21 June with only a small amount cast on part of the roof at 12 noon June 21. In summary, the proposal complies with with solar access provisions of the WDCP and the amended design ensure that solar access to the southern neighbour is minimised.

D7 Views

Merit consideration

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

- To allow for the reasonable sharing of views.*

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

Water view to the ocean, beach and the headland can be observed over the site and across the side of the site from neighbouring properties including, but not limited to No. 33, 35, 37 and 39 and 45 Beach Road. The Applicant has undertaken a view sharing analysis from the neighbouring properties to the immediate west (rear) at No. 39 Beach Road and the property to the and south-west of the subject site at No. 33 Beach Road. In addition, height poles have been installed which depict the height and setbacks of the original proposal. It is noted that the height poles depict the original proposal, the proposal has since been modified to increase the setbacks from the east and south boundaries and reduced the height of the development.

View loss inspections were carried out by the assessing officer to these properties as well as the following properties. No. 33, 35, 36, 37, 39 and 45 Beach Road.

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

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

Comment to Principle 2:

No 45 Beach Road

The primary views from No. 45 Beach Road (to the immediate north) are to the expansive open view of the ocean to the east with lesser distant views of the headland to the north and partial views to Long Reef Headland and Fishermans Beach to the south. The views affected by the proposal are observed from the first floor east facing deck, the open plan living, kitchen and dining room and the ground level deck. The current views across the side boundary of the site are towards a small section of Fisherman's beach and Long Reef Headland looking south-east from both a standing and sitting position. Views are partially obscured by existing vegetation and the existing dwellings on the subject site.

No. 39 Beach Road

The primary views from No. 39 Beach Road (to the rear) are to the east to the ocean and south-east to the Long Reef Headland. The views affected by the proposal are observed from the first floor east facing deck, the open plan living, kitchen and dining room and the master bedroom. Views towards the ocean and a small section of Fisherman's beach are observed across the

rear of the subject site looking east, north-east and south east from both a standing and siting position. Views are partially obscured by existing vegetation, land form and the existing dwellings on the subject site.

No. 35 Beach Road

The primary view from 35 Beach Road (to the south-west) is directly to the east to the ocean and to the south-east the Long Reef Headland. The views affected by the proposal are observed from the ground floor rear deck, the open plan living, kitchen and dining room and two bedrooms from a standing and siting position. The views affected by the proposal are to the north-east, across the side boundary of the subject site. Currently these views are partially obscured by the existing mature vegetation, including the tall Norfolk Pine trees, the landform and the existing built structures including the single storey ancillary structure located within the south-west corner of the site.

No. 33 Beach Road

The primary view from 33 Beach Road (to the south-west) is directly to the east to the ocean and to the south-east the Long Reef Headland. The views affected by the proposal are observed from the ground floor living room from a standing and siting position. These views to the north-east, across the side boundary of the subject site, are partially obscured by the existing mature vegetation, including the tall Norfolk Pine trees, the landform and existing built structures.

No 36 Beach Road

No 36 Beach Road is located to the south-west on the opposite side of the road. The primary view from No. 36 Beach Road is directly to the east to the ocean and to the south-east the Long Reef Headland. The views affected by the proposal are of the ocean and sky observed from the first floor deck, open plan living, kitchen and dining area and roof level deck from a standing and siting position. These views are observed to the north-east across the road, across the roof of No. 33 Beach Road and the side boundary of the subject site.

3. Extent of impact

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

Comment to Principle 3:

No 45 Beach Road

The view across the side boundary of the subject site is partially obscured with the existing dwellings and the mature Norfolk Pines. It is noted that the existing two storey dwelling at No. 43 Beach Road sits forward of the proposed dwelling. The proposal has been amended to delete the elevated projecting deck to the east and reduce the height of the development. As a result of the modifications, it has been assessed that there will be a minimal loss of view towards Fishermans Beach and Long Reef to the south-east observed from the open plan living,

kitchen and dining area and deck. The proposed dwelling with the increased setback from the eastern boundary compared with the existing dwelling at No. 43 Beach Road has the potential to improved view sharing. Furthermore, the primary expansive ocean views observed from the first floor open plan living, dining and kitchen and the first floor and ground floor deck will not be affected by the proposal.



Standing view looking south-east from the corner window adjacent to the dining area.



Standing view from the first floor deck looking south-east.



Standing view from the first floor living area.



Standing view from the ground floor deck looking south east.

No 39 Beach Road

The affected view from the first floor open plan living area, deck and bedroom looking south-east is primarily of the ocean and a small area of beach. It is noted that the view of Fishermans Beach is largely obscured by vegetation and whole / open ocean views are obscured by the existing dwellings on the subject site.

As a result of the amendment to increase the setback of the southern pavilion from the southern boundary and the reduction in height the critical view corridor towards the land interface to the Long Reef Headland and the ocean to the south-east will be retained. The non-complying elements, namely the 0.1 m breach in the height at the south-east corner of the roof, the skylight and the eaves will only result in a minor loss of sky view. The breaching elements will not impact on the critical view corridor. Please refer to photos below taken by the assessing Planner and the view loss analysis submitted by the Applicant. As a result of the amendments, the view loss to No. 45 Beach Road has been assessed as moderate.



Standing view from first floor living area looking south-east.



Standing view from first floor deck looking east.



View loss analysis from 1st floor deck showing the revised outline of the development in orange (source Virginia Kerridge)



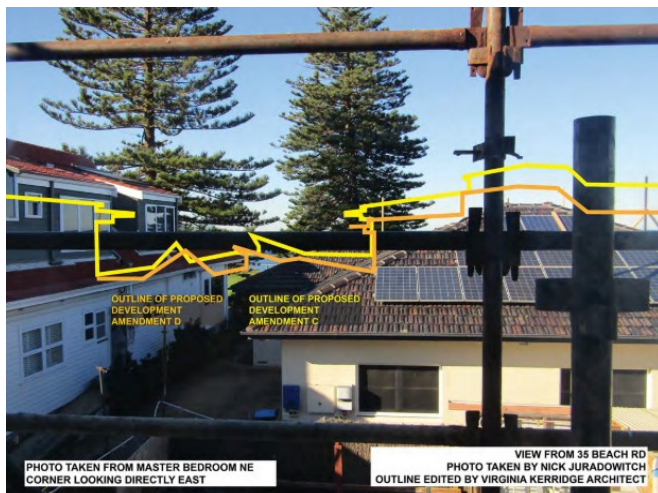
Standing view from bedroom looking south-east.



View loss analysis from 1st floor living room showing the revised outline of the development in orange (source Virginia Kerridge)



View from first floor bedroom looking east.



View loss analysis showing form 1st floor bedroom showing the revised outline of the development in orange (source Virginia Kerridge)

No 35 Beach Road

The affected view is towards the headland / Fox Reserve observed from both a sitting and standing position on the deck, open plan living, dining room and kitchen room and two bedrooms. The affected north-easterly view is primarily of the headland and the existing mature vegetation including the Norfolk Pines. It is also noted that existing structures on the subject site are visible from this view including the single storey out building located in the the south-western corner. The proposed boundary wall will and some of the southern elevation of the proposed dwelling will be visible from the bedroom, living, dining and kitchen area and deck. The southern pavilion has been setback from the southern boundary and reduced in height as a result a small amount of ocean view will be lost, however, the majority of view loss is sky view which is not protected. The primary expansive ocean view observed to the east and the land to water interface view to Long Reef Headland to the south-east will be retained. In addition, the removal of the existing outbuilding has the potential to open up views. In summary, the view loss to No. 35 Beach Road has been assessed as moderate.



View from bedroom looking north-east.



Standing view from dining area looking north east.



Siting view from dining area looking north-east.



View from deck looking north-east.

No 33 Beach Road

The affect view are those observed looking in a north-easterly direction towards the headland and Fox Reserve from a siting and standing position from the living room.

The affected north-easterly view is primarily of the headland and the existing mature vegetation

including the Norfolk Pines. It is also noted that existing structures such as the rear deck to No.35 Beach Road are visible from this view. The southern elevation of the proposed dwelling will be visible from the living room, however, the southern pavilion has been set back from the southern boundary and reduced in height, bulk and scale. The proposed development will be integrated with existing and proposed vegetation which will provide a backdrop to the proposed dwelling. The majority of view loss to No. 33 Beach Road will be of sky while the primary expansive ocean view observed to the east and the land to water interface view to Long Reef Headland to the south-east will be retained. In summary, the view loss to No. 33 Beach Road has been assessed as minor.



View from living room looking north-east.

No 36 Beach Road

No 36 Beach Road is located on the opposite side of the road . The primary view from 36 Beach Road is directly to the east to the ocean across the roof of the single storey dwelling at No. 33 Beach Road and to the south-east the Long Reef Headland. It is not expected that the proposal as amended will impact on any views from No. 36 Beach Road. The proposed dwelling will sit behind the two storey dwelling at No. 39 Beach Road with the Norfolk Pines providing the backdrop to the proposed development. The expensive ocean views enjoyed over the single storey roof of No 33 Beach Road will be retained.



View from first floor deck looking to the north-east.



View from roof top deck looking to the east and north east.



View from first floor living room window looking to the east and north-east.



View from open plan dining and kitchen area.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide

the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

With the exception of a minor 0.1 m breach in the height limit at the south-east corner the development, as amended, complies with the maximum 8.5 m height limit. There is also a minor 0.2 m breach of the wall height relating to the pop out skylight of the southern pavilion and the side envelope relating to the eaves. The breaching elements, namely the eaves, skylight and south-east corner of the roof will result in a loss of sky view and it is assessed that a fully complaint scheme will have the same outcomes in terms of impacts on views.

Conclusion

No 39. Beach Road is the most affect property in respect of view loss, however, the proposal has been amended to minimise unreasonable view loss impacts and the significant view corridor towards the interface of the land and ocean at Long Reef Headland will be retained as well as ocean views looking to the south east.

The views from the neighboring properties to the south and west are across the site and are therefore more difficult to preserve. These view are of the Fox Reserve headland and the views are comprised with the significant mature vegetation that dominates the headland, including the mature Norfolk Pine trees. Due to the typography of the site the south elevation of the proposed dwelling will be visible from these properties, however, the Norfolk Pine trees will be retained and the canopy of these trees will rise above the proposed dwelling.

The view loss from the properties located to the south and west will primarily be a loss of sky view and a small portion of the ocean to the far east.

The proposal has been amended to address the site constraints, in particularly the typography and the significant level difference between the southern boundary of the site and the property to the immediate south at No. 29 Beach Road. The design has been assessed as making the best use of the site to create a skillful response to these site constraints while protecting the amenity of neighbouring properties and the scenic quality of the coastal Headland setting.

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

Comment:

The design, as amended, has been assessed an innovative design solution to a challenging site which is supported by Council's Urban Designer.

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

Comment:

The canopy of the mature Norfolk Pines trees will remain to take priority over views. Council's Landscape Officer has no objections to the proposal subject to conditions including a requirement for TPZ to ensure the Norfolk Pines trees are retained and protected.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the

Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8 Privacy

Clause D8 requires:

1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.
2. Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.
3. The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.
4. The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.
5. Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.

Comment

Northern Pavilion

The upper floor windows of the northern pavilion are set back 2.3m from the northern boundary. The windows relate to a corridor (non-habitable space), a bedroom and a lounge room. In addition, decks adjoins the bedroom and lounge. Privacy devices are used in the design including a splayed window to the lounge with the glazing at an oblique angle, planter beds adjacent to the bedroom windows and the window to the corridor and privacy screens to the northern edge of the decks. Given the location of the windows in the southern elevation of No. 45 Beach Road to the immediate north a condition requires privacy screens to be installed on the north facing bedroom windows reference W1.01, the lounge window reference W1.28 and the entire northern edge of the decks, refer to image below. It is noted that the existing dwelling at No 41 Beach Road is setback between 2 m and 2.9 m from the northern boundary with first floor windows directly overlooking No. 45 Beach Road. Subject to the recommended conditions it is considered that the proposal has the potential to enhance the privacy to the neighbouring northern property at No. 45 Beach Road.

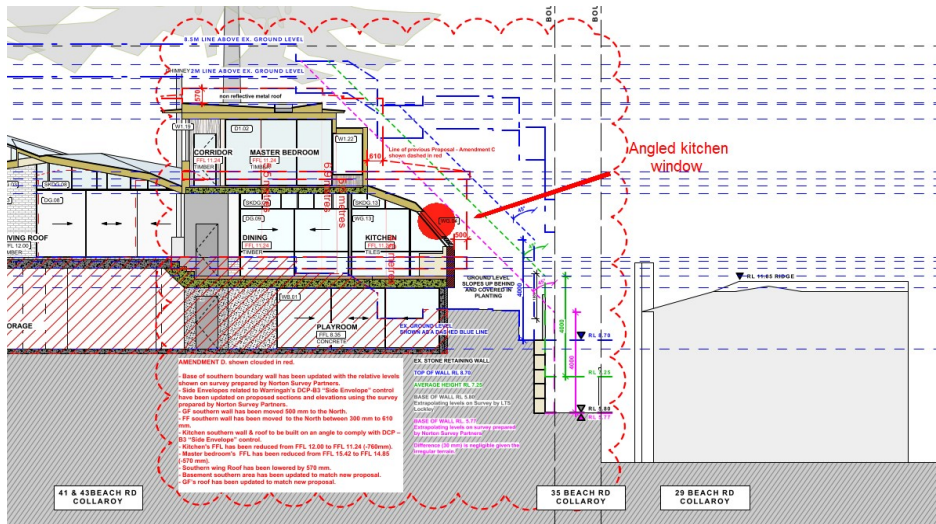


Part of the first floor plan to the northern pavilion showing the windows and deck which are required to have fixed louvres installed.

Southern Pavilion

The amended proposal setbacks the southern pavilion 3.9 m from the southern boundary and introduces an angled window to the kitchen with privacy screen applied up to a height of 1.6 m from FFL. As a result of the site levels the ground floor kitchen sits at a high level than the southern

neighbour at No. 29 Beach Road this combined with the design solution of an angled window with fixed privacy screen will ensure that there will not be any unreasonable impacts in respect of a loss of visual privacy to the southern neighbour, refer to image below. A condition is included in the recommendation requiring the fixed privacy screens to be installed to ensure visual privacy is maintain.



Cross section showing the relationship between the kitchen window and No. 29 Beach Road.

Outdoor area

An outdoor area is located to the south-west corner of the site adjoining the living area. The outdoor area is setback 6.4 m from the southern boundary (approximately 16 m to the rear elevation of No. 35 Beach Road) and 0.9 m from the western boundary. A full height sliding screen is proposed along the southern boundary of the outdoor dining area and a 2.6 m - 2 m high wall is proposed along the west boundary.

Issues have been raised in the submissions regarding acoustic and visual impacts relating to the use of the outdoor dining area to neighbouring properties and it has been requested an acoustic wall replace the sliding screens to address these concerns. Given the setback of the outdoor dining area and the proposed wall to the western boundary it is not anticipated that the use of the outdoor dining area for domestic purposes will give rise to acoustic impact. It is therefore not reasonable to require an acoustic wall in place of the sliding screens.

The wall along the western boundary will also protect the visual privacy to the neighbours at No. 39 Beach Road and partially protect visual privacy to No. 35 Beach Road. In order to ensure that visual privacy is fully maintained to No. 35 Beach Road it is recommended that the a 1.6 m high privacy screen be installed along the southern boundary for a length of 12 m commencing in the far south-western corner. The screen shall be set back 0.9 m from the boundary / the sandstone wall so that it is physically separated from the existing sandstone wall to avoid excessive visual bulk and issues relating to solar access. Additional shadow diagrams have confirmed that there will be no additional overshadowing as a result of the privacy screen to neighbouring properties. The screen will have the benefit of protecting visual privacy between the occupants of the proposed dwelling and the neighbours at No. 35 Beach Road. In addition, the proposed screen planting along the southern boundary will help soften the built form and help reduce privacy impacts.



Extract from the ground floor plan showing the outdoor dining area and the location of required privacy screen.



Existing outbuilding in the south-west corner of the subject site viewed from No. 35 Beach Road.

Merit consideration

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

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

Comment:

The amended proposal combined with the recommended conditions will ensure that the siting and design of the proposed dwelling provides a high level of visual and acoustic privacy for the occupants and neighbours.

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

Comment:

The proposal, as amended, will result in an innovative design solution to the site constraints ensuring the visual and acoustic privacy of neighbouring properties will be maintained.

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

Comment:

The proposal provides for security of the occupants of the dwelling and also allows for passive surveillance of the adjoining reserve in accordance with CPTED principles.

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

D9 Building Bulk

Concern has been expressed by neighbouring residents over the bulk and scale of the proposal. Due to the slope of the land the proposed built form will be visible on approach to the Headland Park from the south. As a result of the design changes, the building bulk has been assessed as acceptable meeting the objectives of clause D9 as discussed below.

Merit consideration

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

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

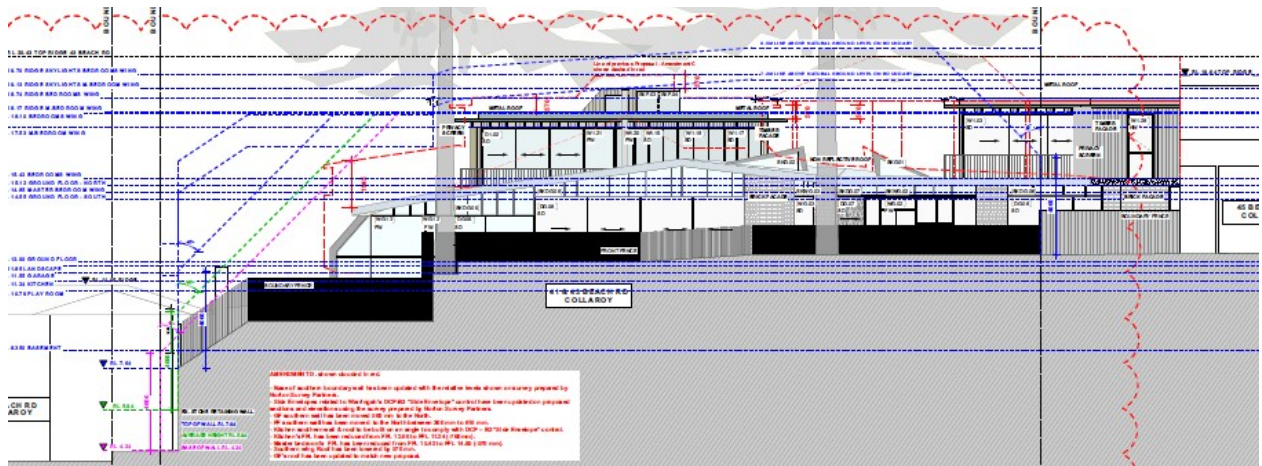
Comment:

The proposal as amended will result in a good design and innovative architecture which addresses the constraints of the Headland site.

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

Comment:

The amended proposal reduced the height, bulk and scale of the southern pavilion and increases the set back to the southern and eastern boundary. The southern elevation is broken up and modulated with a variety of design solutions including a light weight angled glazed wall to the ground kitchen and projecting angled window features to the first floor. The roof form in the south-east corner has also been reduced in height and amended to a lightweight non-reflective structure over the kitchen. In addition, the elevated deck, which projected beyond the rear setback towards Fox Park, has been deleted.



Eastern elevation showing the modifications to the southern pavilion.



Photomontage looking south from Fox Reserve.

In summary, the amended proposal minimises the visual impact of the development from adjoining properties, from Fishermans Beach on approach to the site to the south and from Fox Park Headland Reserve on approach to the site from the north. In respect of the bulk and scale of the northern and western elevation the proposal is generally compliant with all built form controls and it has been assessed that the impact of building bulk is neutral when comparing the proposal to the existing built form on the site.

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

D11 Roofs

The roof is varied and comprises flat roof elements over the first floor with angled pop out skylights, a sloping / angled roof over the ground floor kitchen and angled sculptured roof over the central linking pavilion. The contemporary roof design has been assessed as meeting the objectives of the provision as discussed below:

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

Comment:

The design of the roof over the kitchen has been amended to a angled roof which has been assessed as an innovative design solution to address visual and amenity issues associated with the typography and the need to protect the amenity of the the southern neighbour. The roof form over the central single storey linking pavilion has been simplified and reduced in height. A non-reflective material is proposed for this contemporary roof forms.

- *Roofs are to be designed to complement the local skyline.*

Comment:

The roof line of the existing two storey dwelling at No. 41 Beach Road is visible against the skyline when viewed on approach to the site from the south. The roof of the proposed dwelling will also be visible on approach from the south. Although dwellings in the area are predominantly tradition in design there are a number of other contemporary dwellings dwelling located along Beach Road which have varied roof forms. The contemporary style of the proposed dwelling and roof is therefore not out of character with the area and has been assessed as meeting the objective of the clause.

- *Roofs are to be designed to conceal plant and equipment.*

Comment:

A plant room is located within the basement and there is no plant proposed at roof level. In addition, a condition requires details of plant associated with the AC condenser unit to be submitted for approval. The condition requires this plant to be located at ground level away from the neighbouring boundaries and the eastern frontage of the site.

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

D15 Side and Rear Fences

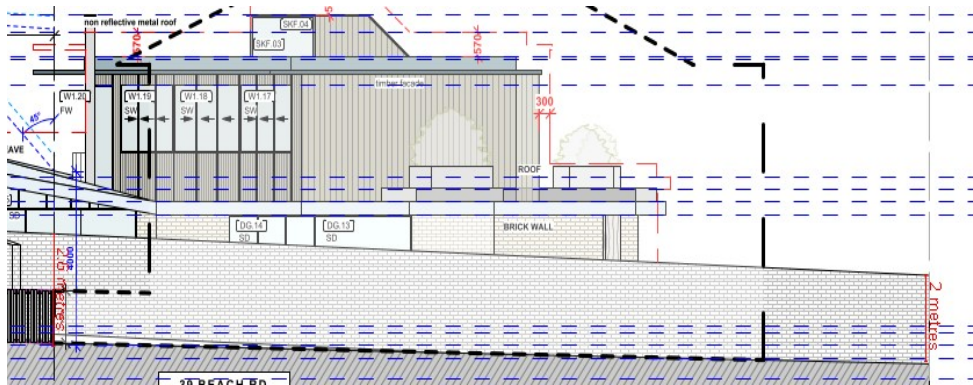
Clause D15 requires:

- 1. Generally, side and rear boundary fences are to be no higher than 1.8 metres on level sites, or 1.8 metres measured from the low side where there is a difference in either side of the boundary.*
- 2. For sloping sites, the height of fences may be averaged and fences and walls may be regularly stepped.*
- 3. All fencing materials are to complement the existing neighbourhood. The use of corrugated metal, barbed wire or broken glass is not permitted.*

Comment

A 1.2 m high timber fence is proposed to the eastern (rear) frontage which is consistent with the existing fences to the neighbouring properties and a 1.8 m timber fence is proposed along the northern boundary which is consistent with neighbouring fences.

The boundary treatment along the western (side) boundary comprises a 1.2 m high timber fence along the north-western section and a 2.6 m - 2 m high brick wall along the south-western section. In order to reduce the visual impact of the wall to No. 39 Beach Road while maintaining visual and acoustic privacy between the properties it is recommended that the height of the wall be reduced to 2m for the length of the wall.

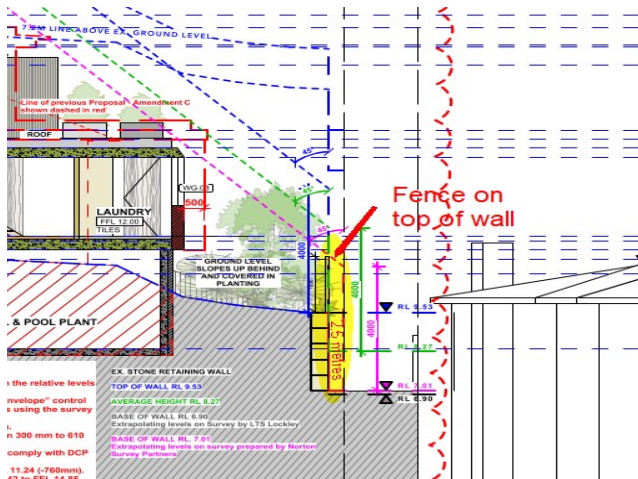


Part western elevation showing the proposed wall along the boundary.

As discussed elsewhere in this report there is a significant level difference of approximately 3 m to the south side boundary of the site. A sandstone retaining wall has been constructed along the edge of the southern boundary which varies in height from approximately 2 m to 3 m. The original proposal included a 1.8 m high timber fence on top of the sandstone wall which has raised concerns from neighbours relating to the visual and solar access impacts associated with the proposed boundary treatment.

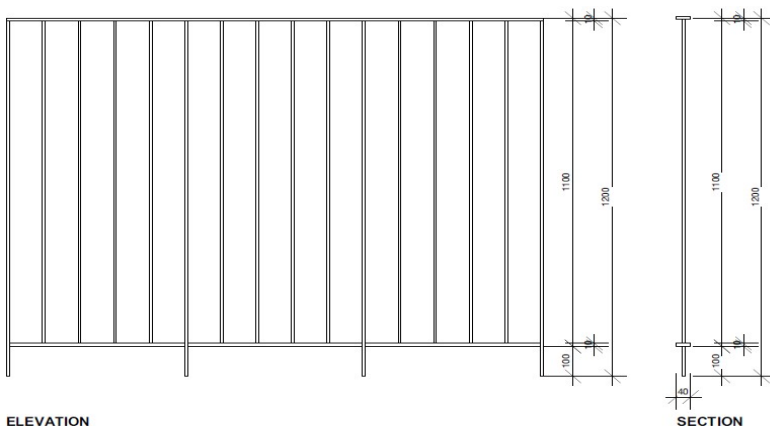


Existing sandstone retaining wall on the southern boundary.



Section showing the proposed fence on top of the existing wall.

In order to address these concerns the design of the fence has been amended to a 1.2 m high see through / open safety fence comprising fine 16 mm steel vertical rods spaces 100 mm apart refer to image below. The proposed fence will provide for safety while ensure minimal adverse visual and amenity (solar access) impacts to the southern neighbour.



Elevation and image of the amended fence.

In order to address issues relating to impacts from the proposed outdoor dining area a condition requires a 1.6 m high privacy screen to be erected a length of 12 m starting at the south-west corner of the site positioned 0.9 m from the southern boundary. The proposed screen will ensure visual privacy is maintained and the 0.9 m set back will ensure that it will be physically separated from the existing wall to minimise solar access and visual amenity impacts. The proposed planting along the southern boundary will help integrate the fence and privacy screen and soften any perceived visual impacts.

Merit consideration

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

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

Comment:

The proposed fence, as amended, has been assessed as an innovative design solution to the site constraints ensuring the visual and residential amenity in terms of solar access to the southern neighbours will be protected. The condition requiring the installation of the 1.6 m high

privacy screen along the south-western section of the site will ensure visual privacy will be maintained.

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

E7 Development on land adjoining public open space

Clause E7 requires:

- 1. Development on land adjoining public open space is to complement the landscape character and public use and enjoyment of the adjoining parks, bushland reserves and other public open spaces.*
- 2. Public access to public open space is to be maximised.*
- 3. Buildings are to be located to provide an outlook to public open space, without appearing to privatise that space.*
- 4. Development is to provide a visual transition between open space, bushland reserves or other public spaces and buildings, including avoiding abutting public open space with back fences.*
- 5. Development is to protect views to and from public open space.*
- 6. Development is to provide buffers for bushfire protection on private land, not on public land.*
- 7. If the adjoining parks, bushland reserves or public open space contain bushland, development is not to threaten the protection or preservation of the bushland.*
- 8. Development should be designed to maximise opportunities for casual surveillance of the public open space.*
- 9. Development is to utilise landscaping or existing landscape elements to screen development.*

Comment

The proposed dwelling provides an outlook to Fox Reserve ensuring opportunities for casual surveillance of the Reserve are maximised. The elevated projecting deck has been deleted from the eastern elevation to ensure that the dwelling does not appear to privatise the public open space. The dwelling is set in an landscape setting to the eastern boundary to complement the landscape character of the Reserve. A condition ensures that no earthwork is permitted within TPZs of the Norfolk Pine trees to ensure it will be protected and retained.

Given the elevated position of the site on top of the headland the dwelling will be visible from the public open space, including Fishermans Beach, to the south. The proposal has been amended to ensure that the bulk and massing of the dwelling is minimised with articulation of the southern elevation, increased setbacks, a reduction in height, use of lightweight glass and non reflective materials and existing and proposed landscape screen planting.

In summary, it has been assessed that the proposal complies with clause E7 and meets the objectives of the clause as discussed below.

- *To protect and preserve bushland adjoining parks, bushland reserves and other public open spaces.*

Comment:

The proposal will not result in any adverse impacts on the adjoining Fox Reserve.

- *To ensure that development responds to its adjacent surroundings to preserve and enhance the natural qualities of the environment.*

Comment:

The design of the proposal has been amended to respond the natural qualities of the environment and typography. Measures are included within the specialist reports and as conditions of consent to ensure that the adjacent and surrounding natural qualities of the environment are preserved.

- *Development on land adjoining open space is to complement the landscape character and public use and enjoyment of the adjoining parks, bushland reserves and other public open spaces.*

Comment:

Landscape plans have been submitted and subject to conditions assessed as acceptable by Council's Landscape Officer. Conditions are included in the recommendation relating to the protection of the Norfolk Pine trees. Subject to the conditions the proposal will not have unreasonable impacts on the landscape character of the adjoining Reserve.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$58,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,800,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;

- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

- *Density - bulk, scale, height and massing and impacts on the character of Collarory Basin and the Headland Park.*

The majority of the development sits below the 8.5 m height limit. The south-east corner of the roof breaches the height limit by 0.1 m (1.1% variation) when calculating the existing ground level using the level suggested by the objectors. The 0.1 m breaching element is set back 8.8 m from the southern boundary and will not, in itself, result in any amenity impacts by way of view loss or over shadowing and there is no perceivable visual impact of the minor breach on the locality.

The proposal has been amended to reduce the bulk, massing and height of the development and increase the setbacks to the south and east. The proposal generally complies with the built form controls contained within the WDCP and the density has been assessed as acceptable.

The contemporary beach design responds to the site constraints. A number of other contemporary buildings are located within the area and the design will not adversely affect the character of the Collarory Basin or Headland Park.

- *Impacts on residential amenity*

The amended design ensures that the existing residential amenity of neighbouring dwellings is maintained in terms of solar access, visual privacy and view sharing. Additional conditions are recommended to ensure residential amenity is protected.

- *Impacts of trees*

Conditions are recommended to ensure that the significant Norfolk Pine trees are protected include no earthwork being permitted within the TPZ. Amended landscape plans are required to be submitted and approved to ensure suitable species selection.

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/1522 for Consolidation of two lots into one, demolition works and construction of a dwelling house including a swimming pool on land at Lot 2 DP 7391, 43 Beach Road, COLLAROY, Lot 1 DP 300846, 41 Beach Road, COLLAROY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA E 120 Rev A Lot Amalgamation Plan	12 December 2019	Virginia Kerridge Architects
DA E 130 Rev A Demolition and Waste Management Plan	3 July 2020	Virginia Kerridge Architects
DA C 140 Rev C Excavation and Fill Plan	3 July 2020	Virginia Kerridge Architects
DA E 100 Rev E Proposed Site and Roof Plan	20 August 2020	Virginia Kerridge Architects
DA 110 Rev E Proposed Basement Plan	20 August 2020	Virginia Kerridge Architects
DA 120 Rev E Proposed Ground Floor Plan	20 August 2020	Virginia Kerridge Architects
DA 130 Rev E Proposed First Floor Plan	20 August 2020	Virginia Kerridge Architects
DA 200 Rev E Proposed North and East Elevation	20 August 2020	Virginia Kerridge Architects
DA 210 Rev E Proposed South and West Elevation	20 August 2020	Virginia Kerridge Architects
DA 300 Rev E Proposed Sections A-A and B-B	20 August 2020	Virginia Kerridge Architects
DA 310 Rev E Proposed Sections C-C and D-D	20 August 2020	Virginia Kerridge Architects
DA 320 Rev E Proposed Sections E-E and F-F	20 August 2020	Virginia Kerridge Architects
DA 330 Rev E Proposed Section H-H	20 August 2020	Virginia Kerridge Architects

DA 400 Rev E Proposed Materials and Finishes Schedule	20 August 2020	Virginia Kerridge Architects
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Engineering Plans		
Drawing No.	Dated	Prepared By
SWDA 1.1 Revision P2	December 2019	Partridge Hydraulic Services
SWDA 1.2 Revision P3	December 2019	Partridge Hydraulic Services
SWDA 1.3 Revision P3	December 2019	Partridge Hydraulic Services
SWDA 1.4 Revision P2	December 2019	Partridge Hydraulic Services
SWDA 1.5 Revision P3	December 2019	Partridge Hydraulic Services

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Waste Management Plan	10 December 2019	Virginia Kerridge Architects
Construction Impact Assessment and Management Plan	May 2019	Botanics Tree Wise People Pty Ltd
Geotechnical Report	15 June 2019	Taylor Geotechnical Engineering

- b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
LA-DA-00 Rev B Cover Page and Drawing Schedule	18 December 2019	360
LA-DA-01 Rev B Landscape Schedule and Notes	18 December 2019	360
LA-DA-02 Rev B Landscape Statement and Precedents	18 December 2019	360
LA-DA-03 Rev B Tree Removal Plan	18 December 2019	360
LA-DA-04 Rev B Landscape Plan Ground Floor	18 December 2019	360
LA-DA-05 Rev B Landscape Plan Basement	18 December 2019	360
LA-DA-06 Rev B Landscape Plan Roof	18 December 2019	360
LA-DA-07 Rev B Landscape Sections 1	18 December 2019	360
LA-DA-08 Rev B Landscape Sections 2	18 December 2019	360

LA-DA-09 Rev B Planting Palette	18 December 2019	360
* The Landscape Plans shall be amended to ensue consistency between the architectural plans and conditions of consent.		

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
DAE 130 Rev A Demolition and Waste Management Plan	12 December 2019	Virginia Kerridge Architects

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	4 March 2020

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

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

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the

work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

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

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall

notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

5. **Installation of solid fuel heater**

Provide Council a certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements.

Reason: To ensure the system operates in a legislatively compliant manner.

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$58,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$5,800,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

7. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

8. On slab landscape planting and associated works

- a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.
- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the

issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

c) The following soil depths are required in order to be counted as landscaping:

-300mm for lawn

-600mm for shrubs

-1metre for trees

Reason: To ensure adequate soil depth for planting and appropriate and secure waterproofing and drainage is installed.

9. **Stormwater Disposal from Low Level Property**

The Applicant is to demonstrate stormwater from the new development within this consent shall be disposed of to a level spreader system in accordance with Northern Beaches Council's Warringah Water Management Policy PL 850 in particular the Stormwater Drainage from Low Level Properties Technical Specification. The level spreader system shall be located sufficiently from the rear boundary to allow for maintenance purposes. Details demonstrating compliance with the Northern Beaches Council's Warringah Water Management Policy PL 850 are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Taylor Geotechnical Engineering Ref TGE21914 dated 15 June 2019 are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Amendments to the approved plans**

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

- The landscape plan shall be amended to incorporate the changes to the setback of the southern pavilion and pool references in the architectural drawings revision D in condition 1. The landscape plan shall ensure that the species along the southern boundary will avoid overshadowing and view loss to neighbouring properties.
- A 1.6 m high privacy screen shall be erected for a length of 12 m from the south-west corner of the site and setback 0.9 m from the southern boundary / the existing sandstone wall.
- The brick wall along the western boundary shall not exceed 2 m in height.
- Fixed and angled privacy screens to a height of 1.6m above the FFL shall be installed to the following windows / decks.
 - W1.01 first floor bedroom north facing window and the entire length of the northern edge of the adjoining deck.
 - W1.28 first floor north facing lounge window and the entire length of the northern edge of the adjoining deck.

- WG0.4 south facing kitchen window.
- The entire length of the southern edge of the deck to the master bedroom.
- WB.02 to the basement playroom shall be amended to a solid wall with a high level window at a height of 1.6m above the FFL.
- The green roof shall not be accessible.

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

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

12. **Boundary Identification Survey**

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

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

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

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

13. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

14. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the

protection of adjoining properties and Council land.

15. Vehicle Crossings Application

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

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

Reason: To facilitate suitable vehicular access to private property.

16. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

17. Amended Plans-Tree protection

a) Plans are to be amended to clearly indicate that ground levels beneath the existing structures on site that occur within the Tree Protection Zone of Tree 13, as identified in the Construction Impact Assessment and Management Plan dated May 2019 prepared by Botanics Tree Wise People, are to be unaltered during demolition and construction.

b) Plans are to be amended to indicate that alteration of ground levels to accommodate stormwater flows and to marry-in to new building levels are to occur outside of the Tree Protection Zone of Tree 13. Alteration may only occur with the authorisation and under the supervision of the Project Arborist on site.

c) Amended plans addressing a) and b) above are to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate

Reason: Protection of significant public trees.

18. Pre-commencement Dilapidation Report

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

19. **Water Quality Management**

The applicant must install filtration devices as described in the stormwater plans provided by Partridge Hydraulic Services and dated 17 December 2019. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

20. **External Finishes to Roof**

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

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

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

21. **Air Conditioning Condenser Units**

Details of the the air condenser unit shall be submitted and approved by the Certifying Authority prior to the issue of the construction certificate. The unit shall not be located adjacent to the site boundaries or the frontage of the site.

Reason: In order to protect acoustic privacy and in the public interest.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

22. **Pre-Construction Dilapidation Report**

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

29 Beach Road, Collaroy
45 Beach Road, Collaroy

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

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

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

rising from the works.

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

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

23. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

24. **Tree trunk, root and branch protection**

(a) Existing trees which must be retained

i) All trees with the exception of trees numbered 2, 3, 5, 6, and 11 in the Construction Impact Assessment and Management Plan dated May 2019 prepared by Botanics Tree Wise People, which may be removed.

ii) Trees located on adjoining land (with the exception of tree 2, which may be removed).

iii) Specific tree protection is required within the Tree Protection Zone of Tree 13 as identified in the Construction Impact Assessment and Management Plan dated May 2019 prepared by Botanics Tree Wise People.

(b) Tree protection

i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by the Project Arborist on site.

ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by the Project Arborist on site.

iii) All tree protection to be in accordance with the Construction Impact Assessment and Management Plan dated May 2019 prepared by Botanics Tree Wise People, AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures and the approved Construction Certificate plans

iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause

E1 Private Property Tree Management and AS 4373 Pruning of amenity trees

v) All tree protection measures, including fencing, are to be in place prior to commencement of works and certified by the Project Arborist.

c) The Site Manager and the Project Arborist must ensure that:

i) the activities listed in section 4.2 of AS4970- 2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site without approval of the Project Arborist, and

ii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree

or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

e) No alteration of ground levels under existing structures within the Tree protection Zone of Tree 13 as identified in the Construction Impact Assessment and Management Plan dated May 2019 prepared by Botanics Tree Wise People is to be undertaken without the authorisation and supervision of the Project Arborist on site.

Note. A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: Tree protection.

25. Project Arborist

- i) A Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works.
- ii) The Project Arborist is to oversee all tree protection measures, removals and works adjacent to protected trees as outlined in the Construction Impact Assessment and Management Plan dated May 2019 prepared by Botanics Tree Wise People and AS4970-2009 Protection of trees on development sites and as indicated on the Construction Certificate plans.
- iii) The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

Reason: to ensure protection of vegetation proposed for retention on and adjacent to the site.

26. Tree removal within the road reserve

- i) This consent includes approval to remove the following trees located within the road reserve:

Species	Location	Tree Number
<i>Araucaria heterophylla</i>	Beach Road road reserve forward of the property	T2 as identified in the Construction Impact Assessment and Management Plan dated May 2019 prepared by Botanics Tree Wise People

- ii) Removal of approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor.

- iii) Details of currently approved tree contractors can be obtained from Northern Beaches Council Public Trees Section prior to removal.

Reason: Public liability

27. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

28. Road Reserve

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

29. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition or excavation 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.

30. Demolition Works - Asbestos

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

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

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

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

Reason: To ensure the long term health of workers on site and occupants of the building is not

put at risk unnecessarily.

31. **Survey Certificate**

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

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

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

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

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

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

32. **Vehicle Crossings**

The Applicant is to construct one standard vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

33. **Protection of sites of significance**

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

34. **Tree Protection - Arborist Supervision of Works**

All works within 5 metres of the existing trees to be retained including pruning, demolition, excavation, civil works, fencing and the like must be carried out by hand under the supervision of an experienced and minimally AQF Level 5 qualified Arborist. Should roots larger than 50mm be encountered all excavation works are to cease immediately and a qualified Arborist is to advise on the impacts of the roots removal on the tree's survival and report to the Principal Certifying Authority prior to works recommencing. If tree roots are present a pier and beam method of footing construction is to be adopted so as to bridge/span any identified lateral roots.

Reason: To ensure protection and retention of the Urban Forest/Natural Environment.

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

35. **Landscape completion certification**

- a) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Principal Certifying Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.
- b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been established and maintained in accordance with the approved landscape plan.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

36. **Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Principal Certifying Authority, assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

- a) Compliance to Arborist recommendations for tree protection and excavation works.
- b) Extent of damage sustained by vegetation as a result of the construction works.
- c) Any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites.

37. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

38. **Post-Construction Dilapidation Report**

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

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

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

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

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

39. **Certification of solid fuel burning heaters**

A certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements is to be submitted to Council prior to the operation of the solid fuel heater.

Reason: To ensure the system operates in a legislatively compliant manner.

40. **Consolidation of lots**

Lot 1 in DP 300846 and lot 2 Sec 7 in DP 7319 must be consolidated as one (1) allotment and registered on a survey plan ((prepared and signed by a Registered Surveyor) with the NSW Land & Property Information Service (NSW Department of Lands).

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

Reason: To ensure development is not constructed over property boundaries.

41. **Retaining wall**

The retaining wall on the southern boundary shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety

42. **Environmental Reports Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

- (a) Waste Management Plan 10 December 2019 Virginia Kerridge Architects
- (b) Construction Impact Assessment and Management Plan May 2019 Botanics Tree Wise People Pty Ltd
- (c) Geotechnical Report 15 June 2019 Taylor Geotechnical Engineering

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

Reason: To ensure compliance with standards.

43. **Required Planting**

a) Trees shall be planted in accordance with the following schedule:

No. of Trees	Species	Location	Minimum Pot Size

Required.			
All trees	As indicated on the approved Landscape Plans	As indicated on the Landscape Plans	25 litre

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

Reason: To maintain environmental amenity.

44. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

45. **House Number**

A house number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

46. **Swimming Pool Requirements**

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

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

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

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

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

(d) A warning sign stating **'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING**

THIS POOL has been installed.

- (e) Signage showing resuscitation methods and emergency contact
- (f) All signage shall be located in a prominent position within the pool area.
- (g) Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life (DACPLF09)

47. Installation of solid fuel heater

Installation work must be carried out by an appropriately experienced and qualified person and in accordance with the relevant provisions of AS2918:2001 – Domestic Solid Fuel Burning Appliances – Installation.

Reason: To ensure the installation is compliant with legislative requirements.

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

48. Environmental and priority weed control

Condition: All weeds are to be removed and controlled in accordance with the Biodiversity Conservation Act 2016.

Reason: Preservation of environmental amenity.

49. Control of Weeds

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds

Reason: Weed management.

50. Maintenance of Stormwater Treatment Measures

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

51. No Planting Environmental Weeds

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

52. **Works to cease if item found**

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage.

53. **Dead or Injured Wildlife**

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

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

54. **Noise**

Noise from combined operation of all mechanical plant and equipment must not generate noise levels that exceed the ambient background noise by more than 5dB(A) when measured in accordance with the NSW Industrial Noise Policy at the receiving boundary of residential and other noise sensitive land uses.

55. **Maintenance of solid fuel heaters**

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

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

56. **Operation of solid fuel burning heaters**

You are requested to take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures should include:

- Using dry seasoned hardwood
- Storing wood in a dry well ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke.

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