

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/1425
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<b>Responsible Officer:</b>	Jordan Davies
<b>Land to be developed (Address):</b>	Lot 1 DP 395093, 132 A Queens Parade East NEWPORT NSW 2106
<b>Proposed Development:</b>	Demolition works, construction of a dwelling house with partial retention of existing structure and new swimming pool
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Nigel Robert Love Judith Louise Love
<b>Applicant:</b>	BBF Town Planners

<b>Application Lodged:</b>	19/09/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	30/09/2022 to 14/10/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 9.97%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 3,019,505.00
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### PROPOSED DEVELOPMENT IN DETAIL

The application proposes a new dwelling which will retain some of the existing foundations and footings. A new swimming pool is also proposed. The remainder of the existing dwelling and garage will be demolished. Specifically, the works include:

#### Level 1

- New driveway utilising the existing crossover providing access to a double car garage
- This level includes a guest bedroom with ensuite, rumpus which leads out to the entertaining deck and pool, office/gym, bathroom and powder room

## Level 2

- Kitchen, dining and living rooms are proposed on this level. These spaces provide access to a rear facing deck. Bathroom, bedroom and laundry also on this level.

## Master Suite level

- Master bedroom with ensuite
- Roof deck with a non-trafficable roof garden surrounding. The deck is accessed via a glazed canopy door.

## External

- Landscaping around the proposal and stormwater management measures.

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater 21 Development Control Plan - A4.10 Newport Locality

Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

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

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

Centre)

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

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 395093 , 132 A Queens Parade East NEWPORT NSW 2106
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Queens Parade East.</p> <p>The site is irregular in shape with a frontage of 18.29m along Queens Parade East and a depth of 38.435m. The site has a surveyed area of 702.9m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living zone and accommodates a two storey dwelling house and garage.</p> <p>The site has a slope from the southern boundary to the northern boundary, with an overall level change of 3m across the site.</p> <p>The site has a number of small trees around the perimeter of the site, with the largest trees being 8m tall and located at the south-western and north-western corners of the site.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by detached dwelling houses. Directly to the east is a large two storey dwelling house, to the west is a two storey dwelling house, to the northern is a one and two storey dwelling house and across the road are two storey dwelling houses.</p>

Map:



## SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- **PLM2020/0186** - Pre-lodgement meeting for a new dwelling and swimming pool, held on 27 August 2020.

## Application History

An initial assessment of the application was undertaken, including consideration of the submission received, a site inspection of the subject property and a site inspection from the property who has objected to the proposal.

On 13 February 2023, Council wrote to the applicant requesting additional information and plan amendments.

On 23 March 2023, the applicant submitted amended plans and supporting documents via the NSW planning portal in response to Council's RFI.

On 30 March 2023, Council forwarded copies of the amended plans to the objector and provided them opportunity to comment.

On 12 April 2023, a further submission was received regarding the amended plans.

On 15 May 2023, Council wrote to the applicant requesting further plan amendments.

On 29 May 2023, an updated Clause 4.6 and further amended plans were submitted.

As the latest amended set of plans submitted further reduced the proposal (further reduced the size of the roof deck and height of the master bedroom), the plans were not required to be notified to again to

the objector. Noting, Council's Community Participation Plan does not require renotification of amended plans when the proposal is of lesser impact (i.e reduced).

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to building height, landscaping, roof deck design and clarification on areas of the existing footings to remain. The information was provided and considered as part of this assessment.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent</p>

Section 4.15 Matters for Consideration	Comments
	authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
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 30/09/2022 to 14/10/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Timothy Arthur Boshier Mrs Maxine Hung Lin Boshier Bill Tulloch	Po Box 440 MONA VALE NSW 1660
Mr Timothy Arthur Boshier Mrs Maxine Hung Lin Boshier Bill Tulloch	134 Queens Parade East NEWPORT NSW 2106



The following issues were raised in the submissions:

- Privacy
- Non-compliance with built form controls including building height and envelope breach
- Visual impact of the development due to bulk and scale.
- Landscape area shortfall.
- View sharing
- Overshadowing

The above issues are addressed as follows:

- **Privacy**

Comment:

Privacy is addressed in detail later within this assessment report, including an assessment of the roof terrace.

- **Non-compliance with built form controls including building height and envelope breach**

Comment:

The submission raised concern with the measurement of the building height from the existing ground levels. Further plans have been provided to demonstrate the extent of the height breach from the existing ground level and the plans now confirm the maximum height is 9.347m based on existing ground levels. The height of the master bedroom has been reduced to now comply with the 8.5m height limit, with the remainder of the encroachments addressed within this assessment report and by the applicant's Clause 4.6 variation request.

An assessment of the envelope breach is undertaken later in this assessment report and be supported on merit.

- **Visual impact of the development due to bulk and scale.**

Comment:

The proposal is considered to be well articulated and consistent with the DFC of Newport, as addressed within this assessment report. An assessment of the height and envelope breach is undertaken later in this report. The proposal will largely present as two stories within a landscape setting. It is noted that the dwelling design of No.134 faces north and east, and essentially turns its back on the subject site to capture coastal views. It is therefore not considered that the proposal will have unreasonable visual impacts on the adjoining property at 134 and the buildings respond appropriately to promote view sharing.

- **View sharing**

Comment:

An assessment regarding view sharing is undertaken later in this report. View sharing is provided by the proposal.

- **Overshadowing**

Comment:

The surrounding properties will retain 3 hours solar access to the primary living space windows and private open space areas. The minor height breaches do not result in overshadowing to living room windows or private open space.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan (PLEP) clause C4 zone Environmental Living, and the following Pittwater 21 Development Control Plan (PDCP) controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D10 Newport Locality</li> </ul> <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone.</p> <p>The proposed development to satisfy the landscape area under C4 zone Environmental Living is required to achieve 60% and this matter shall be assessed and determined by the Assessing Planning Officer.</p> <p>A Landscape + Green Roof Plan is submitted. The green roofs are over three sections of the development and there are structural engineering and landscape requirements to maintaining a successful green roof and conditions shall be imposed, including the requirement for a minimum 300mm soil depth over structure as nominated in the PDCP. Three trees are proposed as part of the landscape proposal however only one is a locally native tree, and to satisfy PDCP control C1.1 at least three trees within the property shall all be locally native species as imposed by conditions. The nominated tree planting of Cupaniopsis (Tuckeroo) is not permitted as this tree is now self-seeding and invasive into natural bushland and coastal headlands within the northern beaches.</p> <p>A Arboricultural Impact Assessment is submitted identifying existing trees within the property and within adjoining properties in proximity, and notes that the existing trees within the property impacted by the proposed works are all exempt species under the PDCP thus no concerns are raised as such exempt species may be removed without Council consent. All other trees in adjoining properties are to be protected regardless of species, and likewise all existing trees within the road reserve, and conditions shall be imposed.</p>
NECC (Bushland and Biodiversity)	<p><b>Biodiversity Referral (26 April 2023)</b></p> <p>The additional information has been reviewed. The submitted arborist report identifies nine (9) trees for removal, all of which are exempt exotic species. No objection is raised to the removal of these trees from a biodiversity perspective, however further assessment against the requirements of PDCP C1.1 (Landscaping) may be appropriate. Amendments to the submitted landscape plan are required to achieve</p>



Internal Referral Body	Comments
	<p>consistency with PDCP B4.5; this includes removal of Plumeria and Cupaniopsis which are either not native or are on the exempt list.</p> <p><b>Biodiversity Referral (16 November 2022)</b> There is insufficient information to assess the proposal for compliance with the applicable biodiversity control, namely Pittwater DCP Clause B4.5 'Landscape and Flora and Fauna Enhancement Category 3 Land'.</p> <p>In accordance with PDCP B4.5:</p> <ul style="list-style-type: none"> <li>• Development shall retain and enhance habitat for threatened species, endangered populations, endangered ecological communities and locally native species</li> <li>• Development shall provide flora and fauna habitat by active restoration, regeneration, and/or creation.</li> <li>• Development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees.</li> </ul> <p>The submitted plans identify a number of trees proposed for removal, however no arboricultural impact assessment has been submitted to justify their removal. In addition, no landscape plan has been submitted to demonstrate how trees proposed for removal will be compensated for through new tree planting.</p> <p>The following information is required to be submitted:</p> <ul style="list-style-type: none"> <li>• Arboricultural impact assessment, prepared by a minimum AQF Level 5 arborist, which assess all trees proposed for removal and those within 5m of works, and provides justification for those proposed to be removed.</li> <li>• Landscape plan which identifies the locations, sizes and species of replacement tree plantings, provided to compensate for prescribed trees proposed for removal. New tree plantings must be locally native (refer to the Native Planting Guide for the Pittwater Ward, available on Council's website).</li> </ul> <p>In addition, it is noted that the Pittwater DCP Clause C1.1 'Landscaping' also applies to the site and that assessment by the Landscape referral body may therefore be required.</p>
NECC (Coast and Catchments)	<p><b>SUPPORTED WITH CONDITIONS</b></p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience and Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone</p>

Internal Referral Body	Comments
	<p>and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Resilience &amp; Hazards) 2021</b></p> <p>The subject land has been included on the 'Coastal Use Area' map under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021. Hence, Clauses 2.11 and 2.12 of the CM (R &amp; H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners dated May 2022, the DA satisfies requirements under clauses 2.11 and 2.12 of the SEPP R&amp;H.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience &amp; Hazards) 2021.</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p>No other coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>
NECC (Development Engineering)	The proposed stormwater discharge to Calvert Parade shall be via the interallotment easement benefiting the site as conditioned. OSD shall be provided in accordance with Council's Water Management for Development Policy. No objections to approval subject to conditions as recommended.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject site is within proximity to a heritage item
	<b>Fink House</b> - 153 Queens Parade East, Newport
	Details of heritage items affected

Internal Referral Body	Comments		
	Details of the item as contained in the Pittwater inventory is as follows:		
	<u>Statement of Significance</u> Completed in 1949 to a design by internationally recognised Sydney architect Harry Seidler, Fink House at 153 Queens Parade East in Newport, has historic and aesthetic significance as an early example of Late Twentieth-Century Sydney Regional architecture demonstrating key modernist features including almost flat skillion roof, bright coloured door panels, exposed concrete structure, horizontal emphasis and open plan.		
	<u>Physical Description</u> Fink House is one-storey, flat roof, white painted weekender designed in a U-shape and located on a sloping site, it takes advantage of the land's topography. The front and back sections of the roof slope towards the centre of the house. The house is similar in plan to the Rose Seidler House with the exception of a broken or 'butterfly' roof form as its roof is closer to a flat roof with a shallow pitch.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register		
	RAIA Register of 20th Century Buildings of Significance		
	Other	N/A	
	Consideration of Application		
	The proposal seeks consent for a new dwelling on the subject site. Fink House is located to the south east across Queens Parade East. While the new large dwelling will be a noticeable addition to the street, it is considered to not impact upon the heritage item or its significance given the physical separation afforded by the road carriageway.		
	Therefore Heritage raises no objections and requires no conditions.		
Consider against the provisions of CL5.10 of PLEP.			
Is a Conservation Management Plan (CMP) Required? No			
Has a CMP been provided? No			
Is a Heritage Impact Statement required? No			

Internal Referral Body	Comments
	Has a Heritage Impact Statement been provided? No

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1240902S\_02 dated 5 September 2022).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	99

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

### SEPP (Transport and Infrastructure) 2021

#### Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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

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

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

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

##### **2.7 Development on certain land within coastal wetlands and littoral rainforests area**

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

Comment: Not within proximity to coastal wetlands or littoral rainforest area.

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

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

Comment: Not within coastal wetlands or littoral rainforest area.

## **Division 2 Coastal Vulnerability Area**

### **2.9 Development on land within the coastal vulnerability area**

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

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

Comment: Not within coastal vulnerability area.

## **Division 3 Coastal environment area**

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

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

Comment: Not within coastal environment area.

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



impact.

Comment: Not within coastal environment area.

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

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

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

Comment: The development will be of similar scape and height, bulk and scale to those surrounding properties on the headland and therefore, will not have a detrimental impact on the visual amenity or scenic quality of the headland. The proposal does not restrict public access to the headland, result in overshadowing of the foreshore, impact aboriginal heritage or result in view impacts from private places.

#### **Division 5 General**

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

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

Comment: The development is not considered to increase risk to coastal hazards.

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

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

Comment: There is no coastal management program applicable to the land.

As such, it is considered that the application does not comply / complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

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

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

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

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

#### **Principal Development Standards**

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.347m	9.97%	No

#### **Compliance Assessment**

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

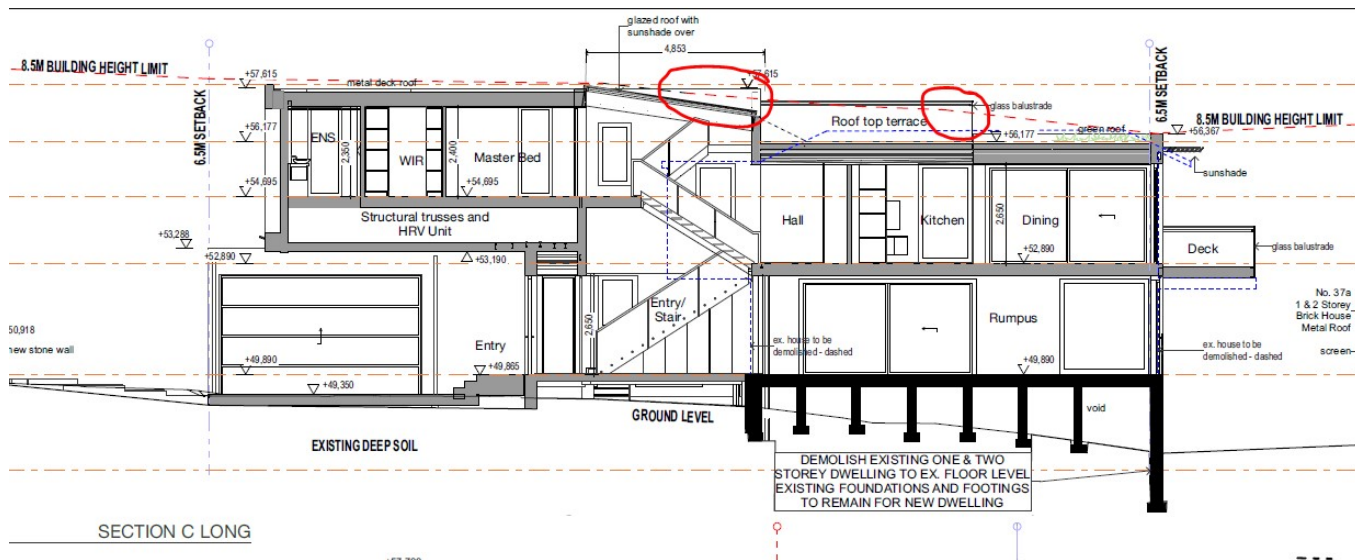
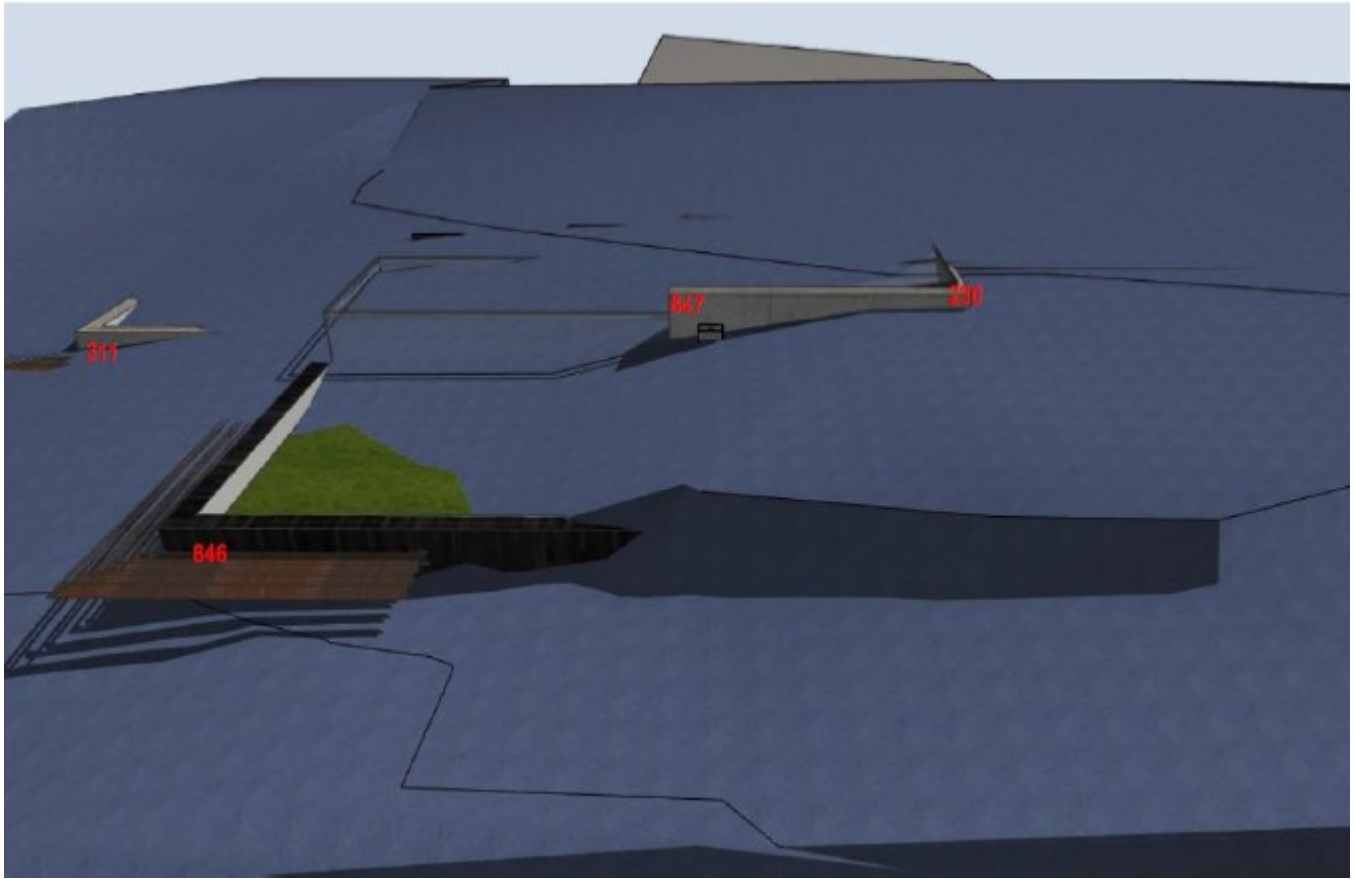
#### **Detailed Assessment**

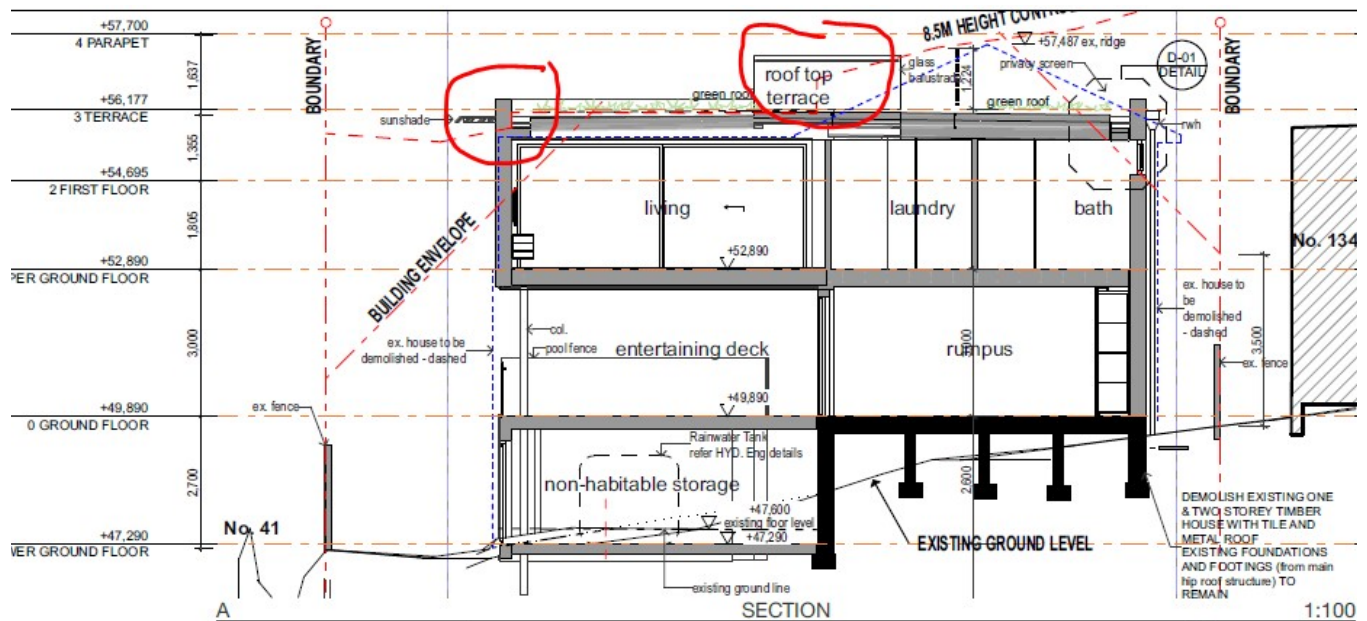
#### **4.6 Exceptions to development standards**

#### **Description of non-compliance:**

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.347m
Percentage variation to requirement:	9.97%

Assessment of request to vary a development standard:





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

#### Clause 4.6 Exceptions to development standards:

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

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

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

#### Comment:

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

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

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by*

*subclause (3), and*

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

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

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

*(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

*(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

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

*(d) to promote the delivery and maintenance of affordable housing,*

*(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*



- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

*Sufficient environmental planning grounds exist to justify the height of buildings variation namely the design constraints imposed due to the site's sloping topography and design challenging presented by retaining the existing dwelling footings. Specifically, the environmental planning grounds to warrant the variation are as follows:*

- The sites topography makes strict compliance with the standard challenging in this instance coupled with an east west cross fall and the retention of the existing foundations.*
- The eastern edge of the dwelling is compliant with the 8.5m development standard. The portions of the dwelling that are encroaching are confined to centrally located elements and the north west corner of the dwelling due to the east west crossfall of the site.*
- The encroachments of the glass balustrades do not give rise to any visual impacts.*
- The height breach does not raise any privacy concerns with the rooftop terrace being significantly spatially distanced from the adjoining dwelling at No. 134 and will include a privacy screen. It is also substantially distanced from the dwelling to the west with no lines of sight available down into the property. Existing and proposed landscape treatments will provide additional privacy screening generally to the western neighbour.*

*Line of sight section drawings, with regard to No. 134, are provided with drawing DA18 which demonstrates the inability of the roof terrace to look into their western elevation clerestory window down into their primary habitable areas.*

- The proposed building height is consistent with the ridge height established by the existing dwelling house. In the absence of any unacceptable privacy, shadowing or streetscape consequences that the proposed upper level terrace simply seeks to achieve a view sharing outcome between properties. Furthermore, the dwelling at no. 134 is orientated to the east to access the ocean views.*
- The minor breach to the northern edge of the roof parapet and breach to the north-west corner of the roof form are a result of the sloping topography with strict compliance in these areas difficult with the retention of the existing footings.*
- The dwelling has been designed to be low impact and superior in its energy efficiency. Extensive planting on and surrounding the dwelling will further soften and screen the development and ensure the landscaping is dominant over the built form. The development is consistent with the C4 conservation zoning and the Newport desired future character despite the minor breaches to the height standard*

*In this regard, I consider the proposal to be of a skilful design which responds appropriately and effectively to the topography with the breaches clearly identified on the drawings provided. The more significant breaches occur to the centre and rear of the site with the eastern elevation having minor breaches and will not have any unreasonable impacts on the dwelling at No. 134.*



*The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:*

- *The proposal promotes the orderly and economic use and development of land (1.3(c)).*
- *Approval of the variation would promote good design and amenity of the built environment (1.3(g)).*
- *The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).*

*It is noted that in Initial Action, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:*

*87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

*There are sufficient environmental planning grounds to justify contravening the development standard.*

#### Council Comment:

Council generally agrees with the points raised as the applicant's environmental planning grounds, in particular the breach to the north-western corner results from the proposal retaining the existing footings of the dwelling which is an 'orderly and economic use of land' and the height breach does not result in any direct unreasonable amenity impacts in terms of overshadowing, views or privacy. The central encroachment to the roof deck balustrades is not considered to result in unreasonable visual impacts for the surrounding buildings as the roof terrace, associated privacy screen and balustrade is centrally located within the roof and has a modest size of 16m<sup>2</sup>. The sloping nature of the site, combined with the retention of the existing footings, makes it more difficult for the proposal to comply. The floor to ceiling heights of the non-compliant element of the building is 2.65m on each level, which is not excessive. Reduction of the floor to ceiling heights just to achieve strict compliance is considered unnecessary given the minor nature of the height encroachment and absence of any unreasonable impacts on surrounding properties.

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

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

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

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

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

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

*proposed to be carried out*

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the C4 Environmental Living zone. An assessment against these objectives is provided below.

**Objectives of development standard**

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

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

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

Comment:

The desired character of Newport calls for a two storey dwelling in a landscaped setting. The proposal is consistent with this, with the proposal presenting as a two storey building (excluding the non-habitable storage space beneath) to the surrounding buildings and will be surrounded by a suitable quantum of deep soil landscaping. The proposal meets the DFC.

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

Comment:

The proposal presents a compliant 8.5m building height presenting to the street frontage and when read in the street context will be compatible with the surrounding two storey buildings. It is noted that the top floor, as presenting to the street, is recessed back to mitigate bulk and scale. The clearstory roof of the adjoining building at 134 has RL's of between RL55.76 to RL57.8, with the portion of the proposed development that breaches the height having being RL56.3 and RL57.6. Therefore, the proposal is consistent with the scale of the adjoining building.

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

Comment:

A high level of solar access will be maintained for the surrounding buildings given the north facing aspect available to these properties. The non-compliance will not cause unreasonable overshadowing.

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

Comment:

View impacts are discussed later in this report. Importantly, view sharing is maintained for the surrounding properties, in particular 134 Queens Parade East which maintains uninterrupted coastal views to the north-east, unimpacted by the proposal. The allowance of a

small roof deck to provide views from the subject site is an element of the proposal that allows reasonable view sharing, given that the existing building on 134 Queens Parade may have obstructed some of the available views from the subject property. Also, the small roof deck will allow views over the top of the adjoining northern property 37 Calvert Parade which will assist in maintaining view sharing, in the event further development occurred of this site. Therefore, although this is a minor exceedance of the balustrade resulting from the roof deck, this allows view sharing and is therefore acceptable.

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

Comment:

The building maintains natural topography via retaining existing footings on the site and minimising excavation. The proposal results in minimal site disturbance via excavation.

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

Comment:

The proposal will maintain the general scale of the surrounding buildings located on the headland. The proposal is consistent with the surrounding bulk and scale of the buildings on the headland and therefore, minimises adverse visual impacts upon the natural environment.

## Zone objectives

The underlying objectives of the C4 Environmental Living zone are:

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

Comment: The proposal is a form of low impact development consisting of a single dwelling house, that has minimised excavation and provided a suitable quantum of landscaping around the perimeter of the building.

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

Comment: As above, the proposal maintains a low density residential character and does not have an adverse impact on the ecological, scientific or aesthetic value of the C4 Zone.

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

Comment: The proposal is low intensity and integrated into the landform given a suitable landscape buffer is provided around the building footprint and excavation has been minimised.

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

Comment: Council's biodiversity team have reviewed the proposal and are supportive, subject to conditions, noting the proposal does not have any unacceptable impacts on the biodiversity values of the locality.

## Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of

the C4 Environmental Living zone.

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

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

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

**7.2 Earthworks**

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

*(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

*(b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

*(c) the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

*(d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

*(e) the source of any fill material and the destination of any excavated material*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

*(f) the likelihood of disturbing relics*

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

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

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

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

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## Pittwater 21 Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	6.5m	N/A	Yes
Rear building line	6.5m	Level 1 - 6.1m Level 2 - 3.6m deck and 6.1m facade Level 3 - 17m	N/A	No
Side building line	2.5m	West - 3.5m	N/A	Yes
	1m	East - 1.5m	N/A	Yes
Building envelope	3.5m	West - Outside envelope	N/A	No
	3.5m	East - Outside envelope	N/A	No
Landscaped area	60% (421.7m <sup>2</sup> )	50% (348.2m <sup>2</sup> )	16%	No

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes

#### Detailed Assessment

#### **A4.10 Newport Locality**

The desired future character of Newport for dwelling houses is as follows:



*"The Newport locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape"*

The proposal is consistent with the above, in that the dwelling is two stories (with the exception of an existing subfloor area at the north-western portion of the dwelling) and is surrounded by landscape planting. Presenting to the public domain, the proposal will read as two stories with a landscape setback presenting to the street. The proposal only requires minor excavation and is therefore integrated into the landscape, with no significant locally native trees removed which maintains the landscape character of the site. There is well proportioned areas of deep soil landscaping within the front, rear and side setback to support new landscaping to enhance the landscape character of the area.

The proposal is considered to be consistent with the DFC of Newport based on the above reference within the DCP, as well as viewing the surrounding developments within the C4 Zone which consist of two and some three storey dwellings.

### **C1.3 View Sharing**

#### Merit consideration

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

- *A reasonable sharing of views amongst dwellings.*

#### Comment:

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

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

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

#### Comment to Principle 1:

The property at 134 Queens Parade East has raised view sharing as a concern. The views which would be impacted via the proposed development is views looking west of the escarpment of Bilgola Plateau and the surrounding Newport district views. Views of the sky are also said to be impacted.

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

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

Comment to Principle 2:

The views of Bilgola Plateau are obtained from a first floor balcony at the front (south) portion of the building. These views are shown in the below photograph. The views are from a standing and seated position and are obtained over the side boundary facing west.



The views of the sky are obtained through a clearstorey window. These are from the living room, kitchen and bedrooms. The views of the sky are from a seated and standing position looking over the side boundary to the west. See below pictures.



### 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:

In consideration of the views obtained from the property in totality, it is only the sky and a portion of the views towards Bilgola Plateau to the west which are impacted as a result of the proposal. It is noted that there are substantial views to the north-west through to the south-east from the property, these views containing the coastline, headlands, newport beach and the ocean horizon. These views will not be impacted (and never will be given the position of the site). The



view from the balcony is considered to be a secondary balcony off a study/bedroom. The views from the primary living areas facing east will be maintained. A portion of views to Bilgola Plateau will be retained from an elevated terrace at the north of the site. Overall and taking into account the views retained, the view impact is considered minor.

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

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

##### Comment to Principle 4:

The building is compliant with the front setback, which determines the view corridor from the front balcony towards the west. The eastern facade of the building is within the 8.5m height limit. The encroachment of the building envelope will only have a minor impact upon sky views. Given these are sky views only, the impact is considered acceptable given that expansive views are retained looking towards the ocean from the remainder of the dwelling. The minor encroachments to the 8.5m height plane are central to the building footprint and do not directly contribute to loss of sky views. Given that building at 134 Queens Parade East essentially turns its back on the subject site and has been designed around capturing coastal views looking north-east, further redesign of the proposal to obtain sky views over a side boundary is not considered necessary and would be unreasonable.

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

##### Comment:

Views from public places are maintained as a result of the development.

- *Canopy trees take priority over views.*

##### Comment:

No canopy trees are proposed to be removed to facilitate views.

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

#### **C1.4 Solar Access**

Shadow diagrams have been submitted with the proposal. The two adjoining dwellings will retain at least 3 hours solar access to their living room windows and private open space areas as a result of the proposal. This is due to the orientation of the lots, which each have a north facing aspect to the rear yard. The proposed development will not result in unreasonable overshadowing impacts. The non-

compliances to the building envelope will not restrict the ability for the adjoining properties to achieve compliance with the controls and any additional impact resulting from the envelope breach is considered minor and would not warrant refusal of the application.

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

Consideration has been had to how the proposal responds to visual privacy for the adjoining properties. It is noted that there is an elevated balcony proposal off the northern façade. The balcony is an existing situation for the site, which is proposed to be rebuilt as part of the proposal. The following comments are made regarding the balcony:

#### **Balcony Privacy**

1. The proposed elevated balcony off the northern façade is consistent with the existing situation, with the balcony to be rebuilt at the same setback to the north and east boundary. The balcony at present does not have privacy screening and based upon a site inspection, it is evident that there will be no direct overlooking of the primary living areas or private open space of 134 Queens Pd East due to the design of this building. Primary living areas of the eastern property are located out of sight. See photo below.



2. Views are available over the roof of the adjoining property to the north and there is small deck that at present has privacy screening which assists with privacy between the two sites. There is a balance to be struck between view sharing and privacy given the available coastal views and given the proposal maintains the status quo with regard to the northern facing balcony, the proposal will not result in an increased impact.



3. Similarly, the east facing living room window is an existing situation and is to be rebuilt in a similar location. However as evident by the below photo, privacy between the two sites will be maintained due to the privacy screening of the elevated terrace at 134 Queens Pd East. Noting, this terrace is a secondary open space area.





4. Looking to the west, there is existing dense planting both within the site and within the neighbouring site that is proposed to be maintained. As per the below photo, privacy is not compromised by the existing deck to be rebuilt. As part of the proposal, there is a new portion of the deck which extends to the west. Given this will be a new element and extend closer to the western boundary, a privacy screen will be required as a condition of consent.



### Roof Terrace

The roof terrace design is considered with regards to privacy, in particular to the property at 134 Queens Parade East. The applicant has provided a number of amended roof terrace designs to address privacy and direct overlooking from the roof terrace. This includes reduction of the size down to 16.5m<sup>2</sup>, increased setback to the eastern boundary and privacy screening to mitigate direct overlooking.

The concern raised by the owner of No.134 is that direct views will be available from the roof terrace through the clearstory window. The applicant has prepared a plan showing how from a standing position, the line of sight from the roof terrace will not directly view the habitable floor level of the living room which is assisted by a privacy screen. From a sitting position, views will be blocked by the privacy screen. It is noted the privacy screening has been designed to be within the 8.5m height limit. The distance between the roof deck and living room within No.134 is of a distance to reasonably mitigate privacy impacts. The roof deck extends to the north of the alignment with the clearstory window and overlooking of the terrace is blocked by an existing structure on the terrace of 134, as shown in the submitted diagram. Views are promoted in a northerly directly from the roof terrace towards the water views, rather than downwards to the side. Based on the spatial separation, the screening, orientation and the small size of the deck, Council is satisfied that privacy has been reasonably retained to the adjoining property.



The central location of the deck and distance to the boundaries are considered sufficient to mitigate direct overlooking of the properties to the north and west.

Furthermore, the provision of the roof terrace allows an enhanced view sharing outcome into the future, noting the potential impacts upon the available views as a result of any future development of number 37 Calvert Parade (to the north).

Therefore, Council is satisfied that privacy has been reasonably mitigated in the circumstances. To ensure the privacy screen is effective, a condition is recommended that the screening consist of a maximum 20mm spacing.

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

#### DCP Control

The DCP requires a 2.5m side setback to one side and a 1m setback to the other side. The proposal is compliant with the side setback control.

The DCP requires a rear setback of 6.5m. The proposal uses the existing footings of the building at the rear (north) of the site and reconstructs the two storey facade in same location, comprising of a 6.1m setback to the façade. The proposal also seeks to reconstruct the existing deck off the northern façade with the same setback of 3.6m. The below figure shows the proposed distance to the rear boundary, including the outline of the existing dwelling and deck indicated in blue.

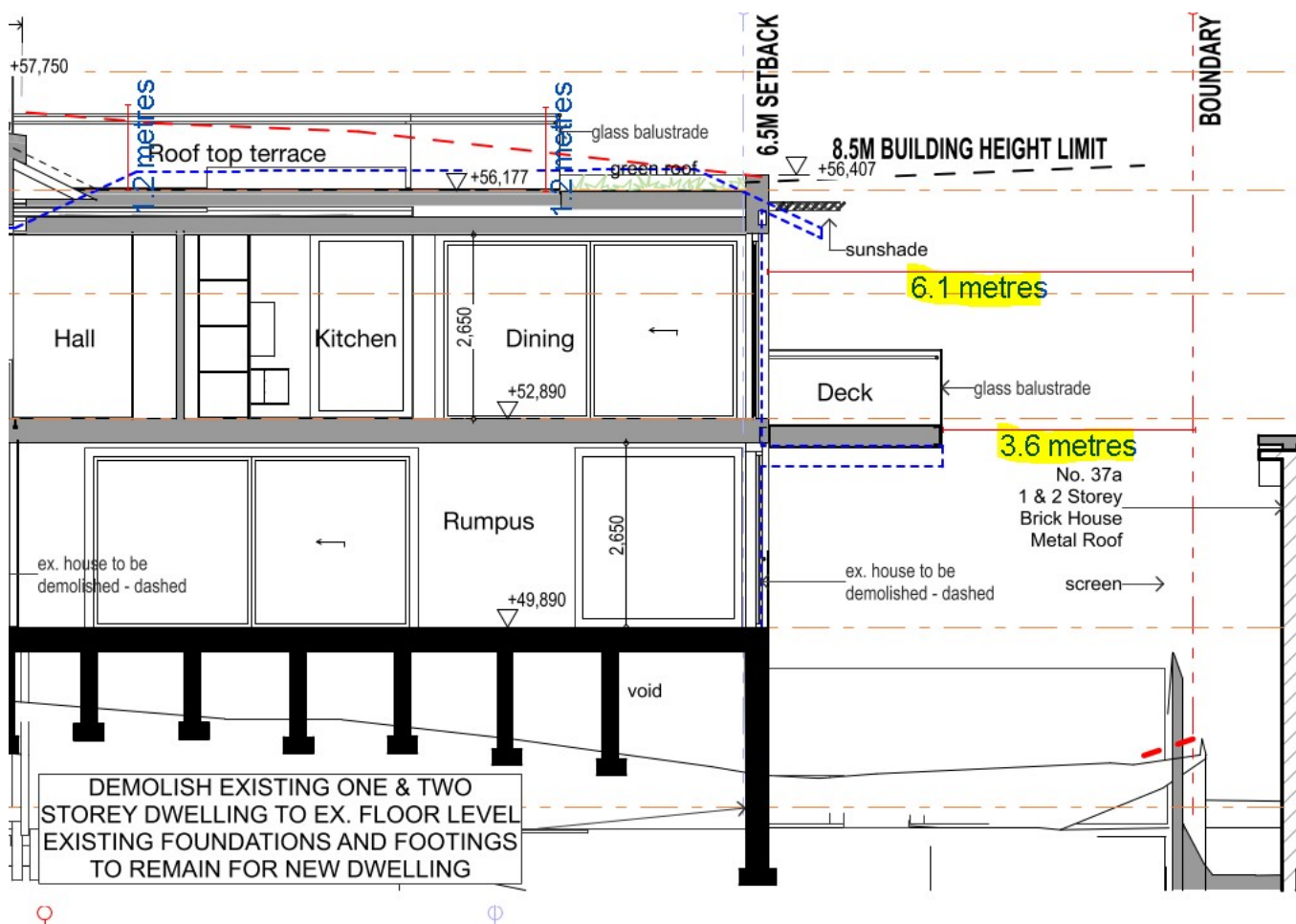


Figure 1 - Extract of plans showing setbacks to northern (rear) boundary.

Therefore, the rear setback is non-compliant and is considered against the outcomes of the control below.

#### Merit Consideration

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

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

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

Comment: The proposal uses the existing spatial proportions of the site, which currently consists of a two storey dwelling with a deck off the rear. Therefore, a bulk and scale has been minimised by maintaining the existing setbacks and two storey form of the existing dwelling.

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

Comment: Reasonable view sharing outcome is achieved as addressed elsewhere within this report. It is noted that the retention of the deck at this location enables views to be maintained for the subject site and is consistent with the current situation on the site. The building at 134 Queens Parade (to the east) looks to have designed privacy screening to the upper floor terrace to account for a view corridor for the dwelling in its current location. Requiring strict compliance with the 6.5m rear setback for this site would diminish the views currently enjoyed from the upper floor and deck. The encroachment to the rear setback does not impact views for the western property.



**Figure 2 - View from existing first floor and deck looking north-east.**

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

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

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

Comment: As the proposal maintains the current situation in regards to the deck and facade setback, there will be no increase in privacy impacts upon adjoining properties. It is noted that the property to the east and north turn their back on the site to capture coastal views looking north. Therefore, given the position of the adjoining properties POS and windows, the proposed deck and upper floor retains a reasonable amount of privacy and does not further detract from privacy for the adjoining sites.

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

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

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

Comment: Access is maintained around the building.

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

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

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

Comment: Not applicable to the development.

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

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

### DCP Control

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

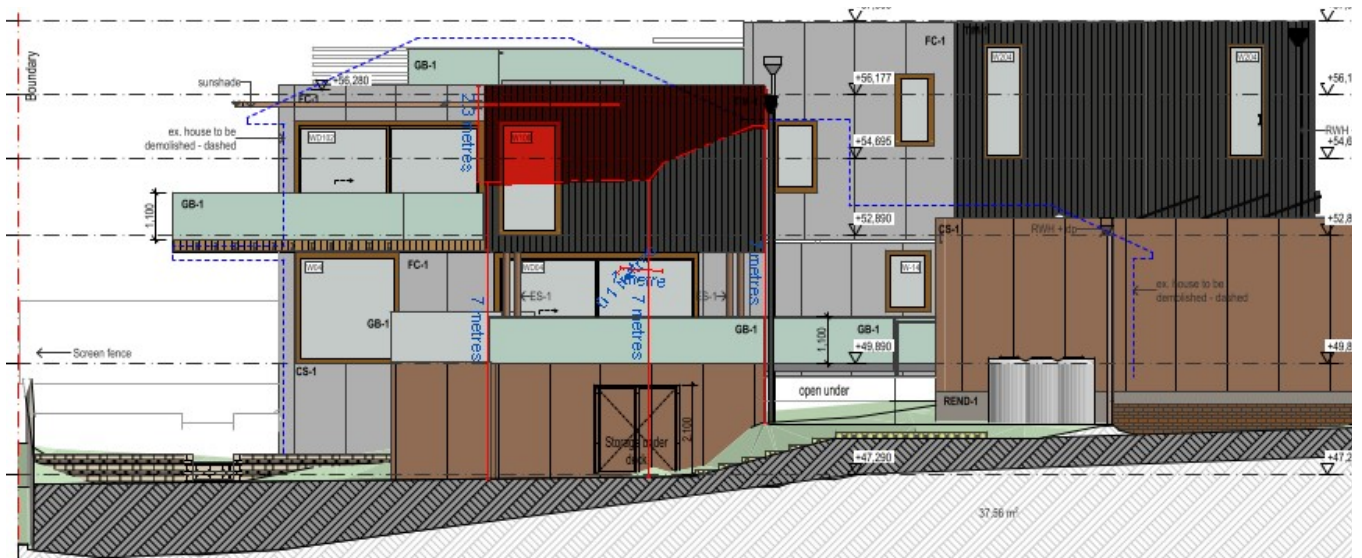
The extent of envelope breach is shown in the below figures for the western and eastern boundary. It is noted that the original plans submitted with the applicant had a larger breach of the building envelope for the master bedroom. Amended plans were received which reduced the height of the master bedroom to reduce the level of non-compliance.

In considering the variation, it is also recognised that the amount of excavation has been minimised for the site and retention of existing portions of the building substructure has been proposed.



**Figure 1 - East elevation encroachment, shown in red.**





**Figure 2 - West elevation encroachment, shown in red.**

### Merit Consideration

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

Comment: The area is characterised by two and three storey residential dwellings in a landscape setting, with a variety of architectural styles, all being detached buildings within a landscaped setting. The proposed building will present as a two storey dwelling, with a landscaped area within the front, rear and side setbacks and generally matching the alignment of buildings along Queens Parade.

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

Comment: The majority of the building sits below the 8.5m LEP buildings height with the exception of a minor encroachments (discussed in the Clause 4.6 section of this report), however this minor encroachment will not render the building excessive for the site. Further tree planting is required as part of the consent conditions and landscape plan, which include canopy trees that are in excess of 8.5m.

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

Comment: The building façade is consistent with the street alignment and will not cause unreasonable building bulk or amenity impacts. The building is setback further from the rear (northern) boundary when compared to the dwelling to the east. Compliant side setbacks are proposed to allow landscaping between buildings.

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

Comment: The upper floor has been stepped back in a number of sections to reduce the bulk and scale and provide the building with articulation. The building is suitably stepped with the land to reduce the extent of non-compliance without resulting in excessive excavation. Recessing and projecting elements, as well as varied materials, are used to break up the bulk of the facade along the side elevation. It is noted that the building at 134 Queens Parade East turns it back on the subject site, with all open space and living spaces facing the north and east. As shown in the eastern elevation, when compared to the existing dwelling on the site (represented by the blue dotted line) the proposed new façade is a comparable height with the existing, with the minor increase resulting from the roof parapet. Given that

the proposal is comparable with the existing situation with regard to height and setback, the encroachment of the building envelope is reasonable and generally maintains the existing bulk of the north-eastern corner of the building. When compared with the height of the adjoining building, the proposed RL at the north-eastern corner is only 0.6m higher than the RL of the building on 134 Queens Parade (RL56.4 v RL55.8) where the buildings align. Therefore, the proposal is generally consistent with the height of the adjoining building.

The western side provides generous setbacks to the common boundary, with a deep central recess to break down the façade presentation. On balance, the portion of building non-compliant with the envelope is not considered to render the entire proposal excessive in bulk and scale.

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

Comment: The proposal will not result in any unreasonable view impacts and view sharing is maintained. It is noted the retention of the existing building footings contributes to the extent of the envelope non-compliance. However, this allows the building to maintain the existing floor levels and maintains a view sharing outcome for the site given the position of the existing development to the east. Therefore, overall the proposal maintains a view sharing outcome for the site whilst not resulting in adverse impacts for the adjoining sites.

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

Comment: The proposal is considered reasonable with regards to privacy. The living room window on the eastern elevation (facing 134 Queens Parade East) is an existing feature of the building and based on a site inspection, does not cause overlooking of the adjoining property given the privacy screening installed on the northern terrace of this building. Solar access is maintained to the adjoining properties as required by the DCP controls. The roof terrace is centrally located to maintain reasonable privacy for the adjoining sites.

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

Comment: Only exempt trees are proposed to be removed and the proposal has new landscape planting required as part of the conditions and landscape plan. Vegetation will be enhanced and replacement planting proposed.

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

### **D10.13 Landscaped Area - Environmentally Sensitive Land**

#### **DCP Control**

The DCP requires that 60% of the site is landscaped area. When including the impervious areas on the site, with no structure above or below, 50% of the site is calculated as landscape area.

The DCP contains a variation clause that allows impervious areas less than 1 metre in width (e.g. pathways and the like) to be counted towards landscaping. The proposal consists of some impervious pathways less than 1m. When including these pathways in accordance with the variation clause, the landscaping is 52.5% (368.4m<sup>2</sup>)

Whilst not expressly included in the variation clause, this proposal includes a number of first floor elements which are cantilevered over the ground level, which does allow additional ground level deep

soil landscaping which will add meaningful landscape area to the site, has reasonable access to sunlight and air, and will contribute to the landscape enhancement of the proposal. When including the landscaping beneath these cantilevered areas (which includes the deck off the northern elevation and beneath the cantilevered master bedroom) the landscape area is 56% (395m<sup>2</sup>). In addition, the water surface of the pool (9.15m<sup>2</sup>) is considered to form part of the outdoor recreation area and when included in addition to the cantilevered area, would result in 404m<sup>2</sup> or 57.5%.

In addition, although not technically counted, extensive roof planting is proposed for the roofscape of the building to assist with thermal comfort and reduction of the heat island effect which is part of the applications passive house design.

Overall, whilst the proposal is not strictly in accordance with the numerical requirements, there are elements of the proposal that contribute to the landscape quality of the site and contribute to the landscape amenity of the proposal.

Furthermore, the proposal is considered to meet the outcomes of the control as discussed below.

#### Merit Consideration

The proposal is considered against the objectives of the control as follows:

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

Comment: As addressed previously within this report, the proposal will present as a two storey dwelling in a landscape setting, with landscaping surrounding the building on the land.

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

Comment: The proposal is well articulated, with large recessing and projecting elements, a variety of materials and will be assisted by the landscaping along the side, front and rear boundaries.

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

Comment: The proposal results in the reasonable retention of privacy and solar access consistent with Council's controls. This is discussed elsewhere within the report.

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

Comment: Two trees are required to be removed as a result of the development. However, Council is satisfied sufficient area is available for replacement landscape planting to assist in reducing the prominence of the built form.

*Conservation of natural vegetation and biodiversity. (En)*

Comment: Council's landscape and biodiversity officer supports the application subject to conditions.

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

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

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

Comment: There are sufficient areas of deep soil in the front, rear and side setback areas to allow

medium and tall trees to be planted to contribute to the landscape setting of the area.

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

Comment: Council's engineers are satisfied with the method of stormwater disposal and water management. In addition to the ground level planting, extensive roof planting will assist with stormwater run-off.

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

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

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

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

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

A monetary contribution of \$30,195 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,019,505.

## **CONCLUSION**

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP

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

Council is satisfied that:

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

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

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

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

## RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2022/1425 for Demolition works, construction of a dwelling house with partial retention of existing structure and new swimming pool on land at Lot 1 DP 395093, 132 A Queens Parade East, NEWPORT, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA04 - Revision A	25/05/2023	Gaea Architects
DA06 - Revision A	25/05/2023	Gaea Architects
DA07 - Revision A	25/05/2023	Gaea Architects

DA10 - Revision A	25/05/2023	Gaea Architects
DA11 - Revision A	25/05/2023	Gaea Architects
DA12 - Revision A	25/05/2023	Gaea Architects
DA13 - Revision A	25/05/2023	Gaea Architects
DA14 - Revision A	25/05/2023	Gaea Architects
DA15 - Revision A	25/05/2023	Gaea Architects
DA16 - Revision A	25/05/2023	Gaea Architects
DA17 - Revision A	25/05/2023	Gaea Architects
DA22 - Revision A	25/05/2023	Gaea Architects
DA23 - Revision A	25/05/2023	Gaea Architects
DA23 - Revision A - External Finishes	25/05/2023	Gaea Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
H01 - Rev A	14/04/2022	Peninsula Consulting Engineers
H02 - Rev A	14/04/2022	Peninsula Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Assessment	16/02/2023	Naturally Trees
BASIX Certificate No.1240902S	28/04/2022	GAEA Architects

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
DA24 Revision A - Landscape and Green Roof Plan	25/05/2023	Gaea Architects
DA23 Planting Schedule	28/10/2021	Gaea Architects

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	6/09/2022	Will Flemming

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

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

## 2. Prescribed Conditions



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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

### 3. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved

in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

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

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

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

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

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

## **FEES / CHARGES / CONTRIBUTIONS**

### **4. Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$30,195.05 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$3,019,505.00.

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

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

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

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

### **5. Security Bond**

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

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

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

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

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

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

6. **On Slab Landscape Works**

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all green roof areas on slab structure, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections.

The following soil depths are required to support landscaping: minimum 300mm.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that all green roof areas on slab structure are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

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

7. **Amendment of Landscape Plans**

The submitted Landscape Plan is to be amended in accordance with the following:

- Trees 1 (*Plumeria*) and 2 (*Cupaniopsis*) are to be replaced with one or two locally native tree species listed in the Pittwater Ward Native Planting Guide, available on Council's website.

The amended Landscape Plan is to be certified by a qualified landscape architect and provided to the Certifier prior to issue of the Construction Certificate.

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

8. **Privacy Screening**

A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the deck located off the living room as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

The privacy screening to the east of the roof terrace shall have a maximum spacing of 20mm.

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

Reason: In order to maintain privacy to the adjoining properties.

9. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Peninsula Consulting Engineers, job number 21-0806, drawing number H01, H02, dated 12/4/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. OSD shall be provided in accordance with Clause 9.3.1 of Council's Water Management for

Development Policy.

ii. Site stormwater shall be discharged to Calvert Parade via the inter-allotment easement benefiting the site.

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

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

10. **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 Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

11. **Compliance with Standards**

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

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

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

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

12. **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**

13. **Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

All street trees within the road verge are protected under Northern Beaches Council



development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

14. **Tree and Vegetation Protection**

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

- i) all trees and vegetation located on adjoining properties,
- ii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment, including section 4, appendix 4, 5, 6, 7 and 8 (specifically tree protection fencing noted in the Tree Management Plan).

Reason: Tree and vegetation protection.

15. **Wildlife Protection**

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

Reason: To protect native wildlife.

16. **Road Reserve**

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

Reason: Public safety.

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

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

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

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

18. **Survey Certificate**

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

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

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

19. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Drawing Normal 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 Certifier.

Reason: To facilitate suitable vehicular access to private property.

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

**20. Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; generally selected from Northern Beaches Council's Native Plant Species Guide Pittwater Ward, or Council's Tree Guide; to achieve at least 8.5 metres height at maturity; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) the planting of *Cupaniopsis anacardioides* (Tuckeroo) is not permitted,
- d) mass planting shall be installed at minimum 1metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch, or within prepared areas on structure supporting suitable free draining planter soil mix and mulch or pebble mulch,
- e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

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

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

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

**22. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal->

[documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf](#)

The form for the application can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf>

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

## 23. **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 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, 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 Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To protect human life.

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

#### 24. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

A maintenance activity schedule for on-going maintenance of green roof areas on slab structure shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

The approved landscape planted areas consisting of lawn, planting at grade, and planting on structure, shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces, terraces or structures.

Reason: To maintain local environmental amenity.

#### 25. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

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

**Signed**



**Jordan Davies, Principal Planner**



The application is determined on 09/06/2023, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**