

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0653
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 33 DP 10571, 1 Bellevue Parade NORTH CURL CURL NSW 2099
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Christopher Peter Mariani Kelly Louise Mariani
Applicant:	Nigel White

Application Lodged:	10/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/05/2022 to 01/06/2022
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 7.05%
Recommendation:	Approval

Estimated Cost of Works:	\$ 364,687.00
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PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent for alterations and additions to the existing dwelling house.

Specifically the works are as follows:

- First floor addition, incorporating:
 - Bedroom 3 with walk-in robe;
 - Bedroom 4 with walk-in robe;
 - Living room and deck;
 - Bathroom;
 - internal access; and

- Ground floor extension to allow for new storage room, deck and first floor access.

AMENDED PLANS

Following a preliminary assessment of the application Council wrote to the applicant on 14 July 2022 outlining concerns that would not allow Council to support the application in its current form. The concerns related to view loss. Following receipt of the letter the applicant erected certified height poles on the site on 23 September 2022. Following a further view loss assessment, the applicant lodged amended plans to address view loss concerns on 14 October 2022.

The amended plans incorporate the following change:

- Reduction of the maximum ridge height of the proposed to RL29.23 from RL30.33 (1.1m)

The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space than the original proposal. The amended plans result in a reduced size development. Therefore, re-notification was not required in accordance with Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 33 DP 10571 , 1 Bellevue Parade NORTH CURL CURL NSW 2099
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Bellevue Parade. The site is irregular in shape with a frontage of 12.225m along Bellevue Parade and a depth of 45.98m along the eastern side boundary and 45m along the western side boundary. The site has a surveyed area of 555.1m². The site is located within the R2 Low Density Residential zone and accommodates a part single and double storey dwelling with a swimming pool in the rear yard and concrete hardstand at the front of the dwelling. The site slopes from the front northern boundary down to the rear southern boundary with a slope of 7% sloping grade. The site has no significant trees and has a mix of native and exotic species of plants and shrubs. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by single, double and three storey dwellings with associated outbuildings/structures and landscaped gardens.

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:

DA2019/0413 - Construction of a carport approved by Council on 29 May 2019

CDC2014/0147 - Alterations and additions to existing dwelling approved 7 March 2014 (Private Principal Certifying Authority)

MOD2014/0245 - Alterations and additions to existing dwelling - minor amendment approved 12 November 2014 (Private Principal Certifying Authority)

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	Warringah 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)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&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. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to view loss and general built form. <u>Clause 61</u> of the EP&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. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the

Section 4.15 Matters for Consideration	Comments
	consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
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 18/05/2022 to 01/06/2022 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 3 submission/s from:

Name:	Address:
Mr Brian Neville Machon	4 Bellevue Parade NORTH CURL CURL NSW 2099

Name:	Address:
Mrs Patricia Joanne Machon	
Mr Graeme John Gallard Mrs Leonie Gallard	8 Bellevue Parade NORTH CURL CURL NSW 2099
Mr Nicholas John Bull Mrs Alexandra Bull	6 Bellevue Parade NORTH CURL CURL NSW 2099

The following issues were raised in the submissions:

- **View Loss**
- **Height of Buildings non-compliance**
- **Built-form non-compliance**
- **Property value**

The above issues are addressed as follows:

- **View Loss**

Multiple submissions have been received from the neighbouring properties to the north of the subject site, raising concern with regards to loss of views to Curl Curl Beach, Manly headland and the ocean.

Comment:

The proposal has been assessed against the view loss provisions under Part D7 of the Warringah DCP (WDCP) and the Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah Council* (2004) NSWLEC 140' in this report (refer to Part D7 under the WDCP 2011 section of this report). In summary, the amended proposal does not cause unreasonable view loss to and from private and public open space. Adequate view sharing is achieved.

- **Height of Buildings non-compliance**

A number of submissions have received raise concerns with the height of the proposed development.

Comment:

As discussed with regard to clause 4.3 of WLEP 2011, the application seeks consent for a maximum height of 9.1m, representative of a 7.05% departure from the 8.5m height prescribed by WLEP 2011. The maximum height non-compliance is limited to the rear portion of the upper floor, with the extent of non-compliance decreasing towards the front of the site. The non-compliant portion of the development does not attribute to any unreasonable impacts upon the amenity of adjoining properties and the height of the development as a whole is compatible with surrounding built form. The non-compliant height of the proposal is supported in this instance.

- **Built-form non-compliance**

The submissions raised concerns that the extent of built form (wall height, envelope, setbacks) non-compliance proposed under this application.

Comment:

This matter is addressed in detail elsewhere within this report (refer WDCP 2011 section of this report). Clause 4.15(3A) of the EP&A Act requires Council to be flexible in the application of DCP provisions and allow reasonable alternative solutions that achieve the objects of those standards dealing with that aspect of the development. As such, where the proposal does not achieve strict compliance with an aspect of the DCP, an assessment of the proposal against the objectives of the control has been undertaken.

- **Impact on property value**

Concern is raised that the development would have an adverse impact on property value.

Comment:

The issue of property value is not one which can be considered under the provisions of Section 4.15 (1) of the Environmental planning and Assessment Act 1979. This issue does not warrant the refusal of the application.

REFERRALS

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

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. A4449989 dated 24 February 2022).

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 who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The proposed development is not considered likely to cause an adverse impact on the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment, coastal environmental values and natural coastal processes, the water quality of the marine estate, native vegetation and fauna and their habitats, public open space or aboriginal cultural heritage.

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

Comment:

The development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1).

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:

The proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

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

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

zone objectives of the LEP?	Yes
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Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.7m - 9.1m	7.05%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
5.9 Dwelling house or secondary dwelling affected by natural disaster	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.1m
Percentage variation to requirement:	7.05%

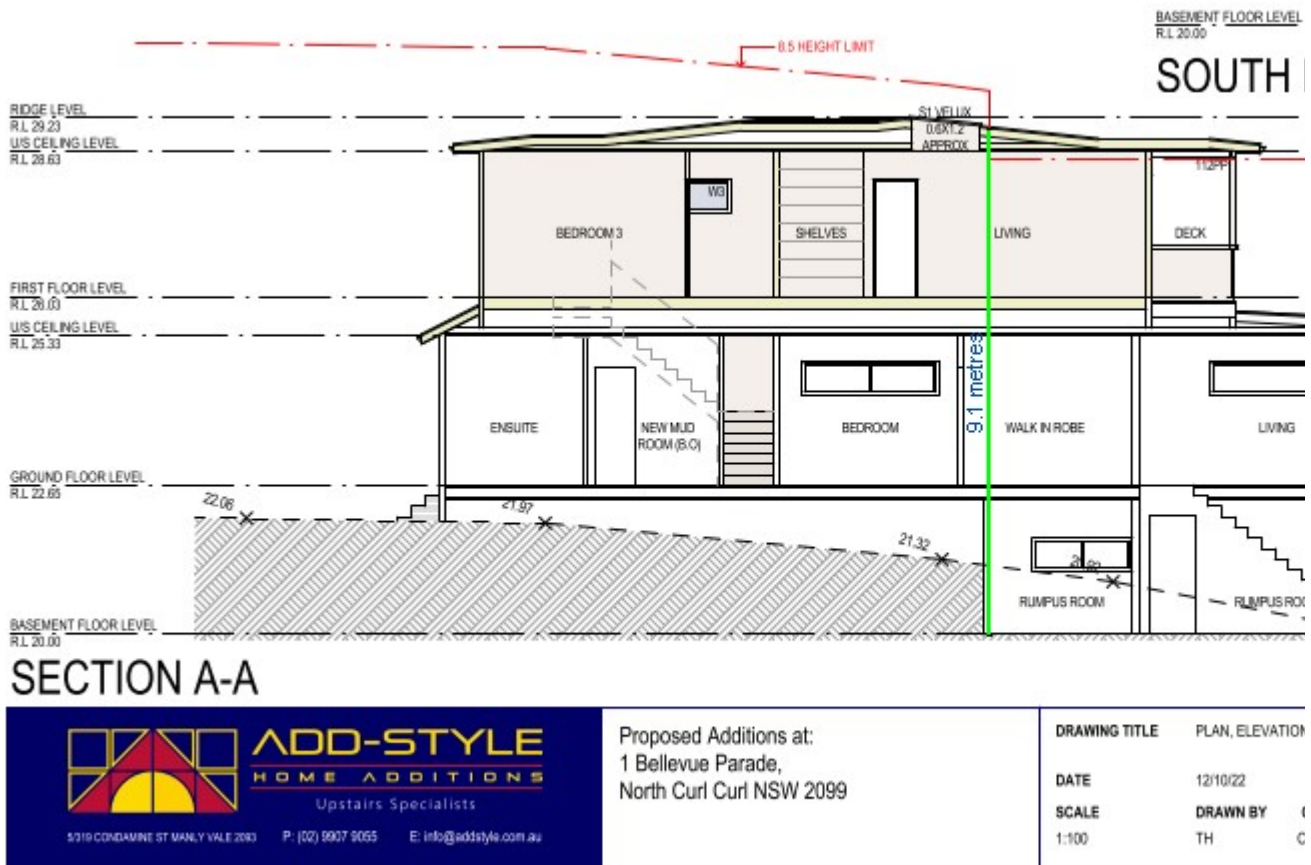


Image 1 - Height non-compliance

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

- (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:

"There would be no purpose served if strict compliance was required by the consent authority. As will be detailed in subsequent parts of this request the variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (shadowing and privacy). There are no adverse 'flow on' non compliances or adverse environmental impacts arising from the variation in this instance. A compliant development (building height) would have a similar performance in regards to overshadowing and bulk/scale. A flat roof profile could be provided to achieve compliance with the standard. Such would appear disjointed with the lower roof profile and is not the preferred outcome from an architectural perspective."

"In this particular case the variation to the building height control does not impact on the ability of the proposal to accord with all other development standards and controls. Compliance with the building height control in this instance would not achieve any additional architectural integrity or urban design merit of the development, as previously discussed. Having regard to the above there are well founded environmental planning grounds to vary the development standard in this instance."

Council's Assessment of the Clause 4.6 Request:

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development maintains the pattern of the neighbourhood including predominant heights
- The development promotes good design and amenity of the built environment, noting that the dwelling house integrates and works with the sloping topography of the property while maintaining suitable amenity for adjoining 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 R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

This compliant presentation in the streetscape and appropriate response to the topography of the land ensures that the house would be compatible with the height and scale of the surrounding development.

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

Comment:

The proposal minimises visual impact on amenity to a reasonable extent by providing modulation to the dwelling including side, front and rear setbacks that are compliant with the relevant controls under the WDCP 2011. As further assessed in this report under Part D7 - Views, the nature of these views and the views to be retained provide an outcome in which the impact on the views is not unreasonable. The proposed design also complies with the relevant controls for sunlight under the WDCP 2011 and involves a design with physical separation to sufficiently minimise

privacy loss.

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

Comment:

The proposed dwelling provides a two storey presentation in the streetscape and allows for soft landscaped area at the front and rear of the dwelling. This provides a situation in which the scenic quality of the area will be suitably maintained. Additionally, the maintenance of compliant front setback allows for views to be reasonably maintained to the coast subject to conditions and the vegetation maintained on site adds to the scenic quality of the bush environment.

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

Comment:

The proposed non-compliance is to the rear of the dwelling and wont be readily visible as viewed from Bellevue Parade.

Zone objectives

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

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

Comment:

The proposed development retains the residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

The proposed is for alterations and additions to an existing dwelling house.

It is considered that the development satisfies this objective.

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

Comment:

The development is consistent with the desired landscape setting, retaining landscaping to the front and rear of the dwelling.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.2m	13.8%	No
B3 Side Boundary Envelope	5m	West Outside envelope: height 0.4m - 0.6m Length: 4.6m	up to 12%	No
	5m	East: Outside envelope: height 0.3m - 1m Length: 10.3m	up to 20%	No
B5 Side Boundary Setbacks	0.9m	West: Ground floor: 0.99m - 1.1m first floor: 2.4m - 3.2m	-	Yes
	0.9m	East: Ground floor: 1m first floor: 1.1m - 1.8m	-	Yes
B7 Front Boundary Setbacks	6.5m	Ground floor: Deck steps 5.5m Storage: 6.5m First floor: 6.5m - 7m	15.3%	No
B9 Rear Boundary Setbacks	6m	First floor: 25m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	36.61% (201.8sqm)	9.15%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

While most of the proposed dwelling will comply with wall-height requirements, the rear portion of the developments breaches the maximum 7.2 metre requirement. The proposed wall height is 8.2m, non-

compliant with the numeric control. This represents a 13.8% variation to the numeric control.

Merit consideration:

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

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

Comment:

Despite the non-compliance, the resulting development will maintain a two storey appearance when viewed from the street. Due to the fall of the land that slopes away from Bellevue Parade, the non-compliant elements will not be visible when viewing the development from the primary frontage at Bellevue Parade. Furthermore, the first floor addition has included varied upper floor wall plans on the side elevations to visually reduce the built form. Overall, the proposal is considered to achieve this objective.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

The proposed development is sited below the established tree canopy.

- *To provide a reasonable sharing of views to and from public and private properties.*

Comment:

The proposed development will not give rise to unreasonable view loss from adjoining properties and public open space, with the proposal consistent with the objective of Part D7 (Views) of the WDCP.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The wall height numeric non-compliance does not have a detrimental impact upon the amenity of nearby residential and public properties, specifically with regard to views, solar access, privacy and visual bulk. It is noted that the non-compliance is exacerbated by the existing excavation on site.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The proposed development does not propose significant excavation on the subject site.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposed roof pitch and design is compatible with the variety of room forms within the locality.

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

B3 Side Boundary Envelope

Description of non-compliance

Under Clause B3 of Warringah Development Control Plan 2011, buildings must be sited within a building envelope determined by projecting planes at 45 degrees from a height of 5 metres above ground level (existing) at the side boundaries.

The proposal sits outside of the building envelope on the eastern facade as depicted in figure 1. The eastern elevation obtains an encroachment of 0.3m - 1m in vertical height for a horizontal length of 10.3m, resulting in a maximum variation of 20%.

The proposal sits outside of the building envelope on the western facade as depicted in figure 1. The western elevations obtains an encroachment of 0.4m - 0.6m in vertical height for a horizontal length of 4.6m, resulting in a maximum variation of 12%.

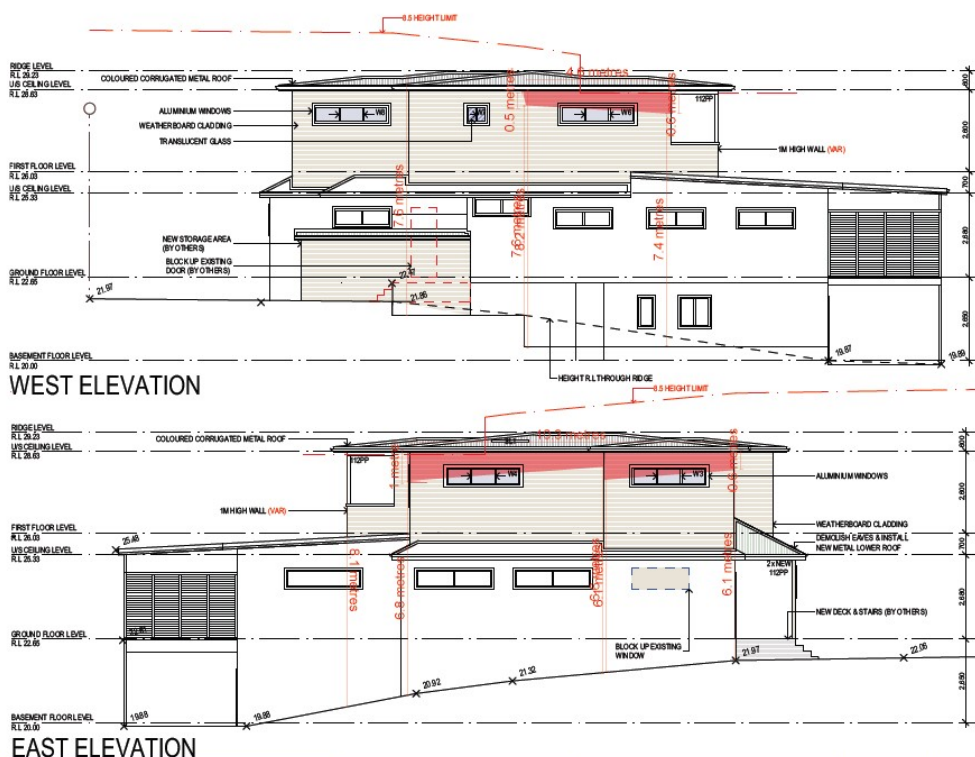


Figure 1 - Building envelope non-compliance

Merit consideration

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

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

Comment:

The proposed non-compliance with the building envelope control is not found to cause any unreasonable visual impacts. While a small portion of the roof exceeds the maximum permissible building height at the rear, the dwelling is appropriately setback from the side boundary and is sufficiently articulated to satisfy this objective. The overall built form is generally consistent with that of surrounding development.

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

Comment:

The windows proposed at first floor level along the side of the building are highlight windows will not directly overlook living areas of adjoining dwellings. Additionally, the proposal is accompanied with shadow diagrams that demonstrates adequate solar access and light to the subject site and neighbouring sites.

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

Comment:

The dwelling is considered to respond to the topography of the site. The first floor as amended has been minimised to ensure the bulk and scale it suitably mitigated.

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

B7 Front Boundary Setbacks

Description of non-compliance

Part B7 of Warringah Development Control Plan 2011, requires development be setback 6.5m from the front property boundary.

The proposal largely complies with the minimum front setback control by maintaining the existing building line. However, the proposal includes structures, such as new entry stairs and deck, which are setback 5.5m from Bellevue Parade. This represents a 15.3% variation to the numeric control.

Notably, the first floor addition is compliant with the numeric control being setback 6.5m - 7m from the front property boundary.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

Notwithstanding the encroachment, the entry stairs do not present an unreasonable bulk and scale, as viewed from Bellevue Parade and continue to ensure a sense of openness commensurate with the surrounding area and established streetscape character. The proposal does not alter the building line to the dwelling, therefore ensuring no further encroachment by the dwelling.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

Entry stairs are not an unreasonable structure to be located within the front setback and provide an appropriate means by which visitors and occupants to enter and exit the dwelling. The entry stairs will not adversely impact on the visual continuity and pattern of buildings and landscape elements along Bellevue Parade and wider area.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The entry stairs along with proposed planters will improve the existing streetscape character and provide for a high-quality streetscape amenity outcome.

- *To achieve reasonable view sharing.*

Comment:

The entry stairs are at ground floor level and will not impact on existing view sharing opportunities.

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

C3 Parking Facilities

There is no proposed change to the existing parking arrangement.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

Part D1 of the WDCP 2011 requires at least 40% of the subject site to be landscaped open space. The application proposes 36.61% (201.8sqm), non-compliant with the numeric control. This represents a 9.15% variation to the numeric control.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

With the exception of the front porch, the existing landscaping within the front setback remains unchanged.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The proposal will not unreasonably impact on existing indigenous vegetation, topographical features, and habitat for wildlife.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

The landscaped open space provides sufficient dimensions that allow for the retention of shrubs and canopy trees to mitigate the height, bulk, and scale of the proposal. Despite, the minor numerical non-compliance, sufficient landscaped open areas are provided across the site.

- *To enhance privacy between buildings.*

Comment:

The proposal will not result in any unreasonable privacy impacts.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The proposal will not impact on the recreational opportunities on site, which are generally to the rear, with the proposed works in the front setback area.

- *To provide space for service functions, including clothes drying.*

Comment:

The proposal has sufficient space for service functions, including clothes drying

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

The proposal will continue to facilitate appropriate water management and infiltration of stormwater.

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

D7 Views

As a result of the public exhibition of the development application, Council received 3 submissions raising view loss as a concern (Nos. 4, 6 and 8 Bellevue Parade, North Curl).



Image 1 - Subject site and objecting properties.

To assist Council in its assessment of the application, a request was made for height poles to be erected on site to reflect the envelope of the original proposal. The applicant erected 5 poles to emulate the envelope of the original proposal. Survey confirmation of the pole heights and location were provided by the applicant on 26 September 2022 (Refer to plan prepared by prepared by Total Surveying Solutions dated 23 September 2022).

The location of the height poles is shown below:

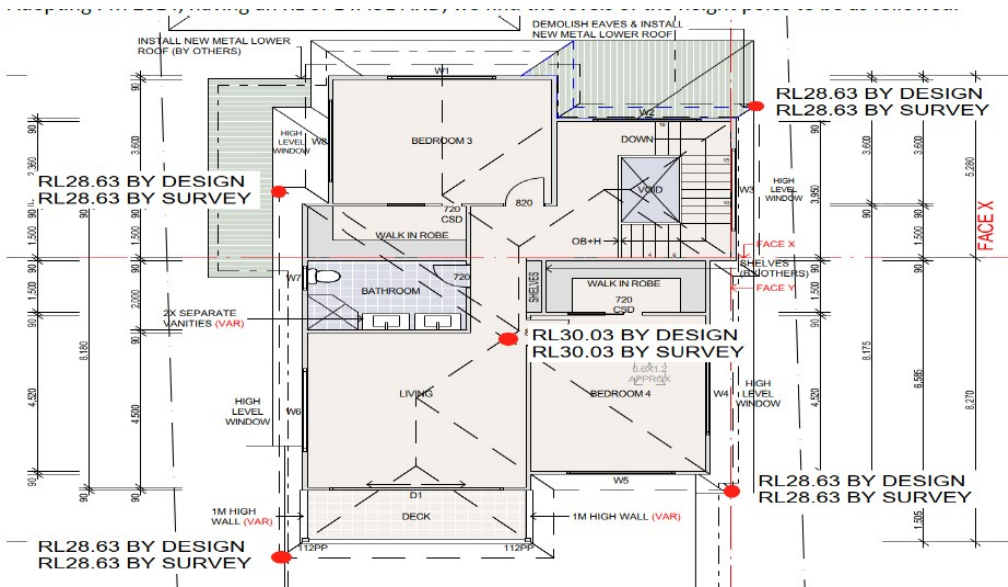


Image 2- Survey confirmation of amended height poles (dated 23 September 2022)

Note: The survey confirmation reflects the envelope of the first iteration of the proposal.

Merit consideration

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

- *To allow for the reasonable sharing of views.*

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

Nos. 4, 6 and 8 Bellevue Parade, North Curl Curl

The nature of the views affected from these properties would be Curl Curl Beach, Manly Headland and the land-water interface. All of these views are highly valued.

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

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

views. The expectation to retain side views and sitting views is often unrealistic”.

Comment to Principle 2:

No. 4 Bellevue Parade, North Curl Curl

Curl Curl Beach, Manly Headland and the land-water interface views are primarily taken from both the ground floor balcony, lounge room and study as well as the first floor balcony, sitting room and bedroom 1. The views from these areas are across the front boundary (south) and obtained from a sitting and standing positions.

No. 6 Bellevue Parade, North Curl Curl

Curl Curl Beach, Manly Headland and the land-water interface views are primarily taken from both the lower ground floor balcony, bedroom and lounge room as well as the upper floor terrace, living room and master bedroom. The views from these areas are across the front boundary (south-east) and obtained from a sitting and standing positions.

No. 8 Bellevue Parade, North Curl Curl

Curl Curl Beach, Manly Headland and the land-water interface views are primarily taken from the ground floor lounge room, bedroom and terrace. The views from these areas are across the front boundary (south-east) and obtained from a sitting and standing positions.

It is noted that views from a sitting position are difficult to protect.

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:



Photo 1 - Ground floor living



Photo 2 - Ground floor balcony



Photo 3 - Ground floor living



Photo 4 - First floor balcony

No. 4 Bellevue Parade, North Curl Curl

The proposed development will reduce ocean views from high use areas, being the ground floor rooms listed above, to a severe extent. Views of the land-water interface and Manly headland will be impacted to a minor extent. Views from the first floor rooms will be retained in full.

Qualitatively and in consideration of the existing views from the No. 4 Bellevue is **moderate**.

The view impact is not considered 'moderate to severe' given that views from the first floor will not be affected. While the ground floor living areas of the ocean will be significantly impacted, it is noted that aspects of the ocean views and the headland will be retained. Therefore, in consideration of all views the extent of impact is moderate.



Photo 5 - Ground floor living



Photo 6 - Ground floor living



Photo 7 - Lower ground floor balcony

No. 6 Bellevue Parade, North Curl Curl

The proposed amended development will ensure highly valued views from the lower ground floor living areas as well as the upper floor living areas and bedroom will be retained. The extent of impact is negligible. This is as a direct result of the reduced roof ridge level (RL30.33-RL29.23).



Photo 8 - Ground floor living



Photo 9 - Ground floor balcony

No. 8 Bellevue Parade, North Curl Curl

The proposed amended development will ensure ground floor living areas and bedroom will be largely retained, the proposed addition will have a minor impact on existing beach views.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposed addition is compliant with the relevant setback controls and exhibits non-compliance with the Height of Buildings development standard as well as the wall height and side boundary envelope WDCP controls. In relation to the building height, wall height and side boundary envelope, the non-compliance is primarily caused by the existing excavated area to the rear of the site, which would constrain any first floor addition proposed on the site. To provide a fully compliant building height and side boundary envelope would limit the design potential of the proposal and would not result in a significant difference to the view loss outcome.

Upon analysis of the views in question, the proposed development will obstruct aspects of the existing view corridor of Curl Curl Beach. With respect to the use of the room, the availability of other views, and the distant/vulnerable nature of the view in question, the impact of the development on the whole is considered to be minor.

The objections from the neighbouring properties when raising specific objection to the loss of view have stated that the loss of views is a direct result of the height non-compliance, which exceeds the 8.5m standard at the rear portion of the site. However, further amendments are not considered to be warranted in this circumstance as the impact associated with a compliant built form to the rear part of the site would still impact upon the views to a comparable degree, in so far as the impact from compliant portion of the site would remain.

In answering the question of 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, the proposal has maintained acceptably sized view corridor over the top of the development. Any further design mitigation would not deliver the same design potential for the site. Overall, the proposal itself is acceptable and will result in a reasonable sharing of views.

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

Comment:

The reduction of the maximum ridge height of the roof by 1.1m (RL30.33- RL29.23) from the original proposal to the amended current proposal ensures that view lines from the adjoining properties will be retained to a reasonable extent. As a result, the proposal demonstrates adequate design solutions in an attempt to develop a proposal that incorporates modern and contemporary architecture that is directly responsive to the natural topography of the land.

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

Comment:

Existing trees within the immediate vicinity of the subject site do not affect available views.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$3,647 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$364,687.

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

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

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

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

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

RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2022/0653 for

Alterations and additions to a dwelling house on land at Lot 33 DP 10571, 1 Bellevue Parade, NORTH CURL CURL, 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
DA 1/5- Site Plan	12 October 2022	Add-Style
DA 2/5- Ground Floor	12 October 2022	Add-Style
DA 3/5- Proposed First Floor Plan	12 October 2022	Add-Style
DA 4/5-West and East Elevation	12 October 2022	Add-Style
DA 5/5- North, South elevation and Section A-A	12 October 2022	Add-Style
SEDIMENT AND EROSION CONTROL PLAN	15 March 2022	Add-Style

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A449989	24 February 2022	24 February 2022

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:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	Kelly & Christopher Mariani	11 March 2022

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department,	EDMS Reference	Dated
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Authority or Service		
Ausgrid	Ausgrid Referral Response	N/A

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

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

3. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such

damage.

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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 \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa

area.

- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$3,646.87 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 \$364,687.00.

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.

6. Security Bond

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

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

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

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

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

7. Stormwater Drainage Disposal

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

8. Compliance with Standards

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

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

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

9. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

10. Sydney Water "Tap In"

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

Please refer to the website www.sydneywater.com.au for:

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. 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.

12. 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.

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

13. Stormwater Drainage Disposal Certification

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

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

Signed



Maxwell Duncan, Planner

The application is determined on 17/01/2023, under the delegated authority of:



Rodney Piggott, Manager Development Assessments