

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1875
---------------------	-------------

Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 5 DP 237925, 108 Cabarita Road AVALON BEACH NSW 2107
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Andrew John Scully
Applicant:	Spannenberg & Son Pty Ltd

Application Lodged:	08/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	15/11/2022 to 29/11/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 17.06%
Recommendation:	Approval

Estimated Cost of Works:	\$ 957,000.00
--------------------------	---------------

EXECUTIVE SUMMARY

This development application seeks consent for the alterations and additions to an existing dwelling house, and is referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10% to *Clause 4.3 Height of Buildings* of the *Pittwater Local Environmental Plan 2014* (PLEP 2014).

The maximum permitted building height under the LEP is 8.5 metres. A variation to which a Clause 4.6 variation request for the non-compliance with the building height standard arises from the replacement of the roof material and addition of two (2) skylights and the existing building has a height of 9.95 meters, resulting in a variation of 17.06%. A window addition is also included on the eastern elevation (BED 2), which will be located above 8.5 metres, but will remain under the existing non-compliant building height of 9.95 metres.

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

Generally, the proposal is compliant with all relevant built form controls of the Pittwater 21 Development Control Plan (P21DCP), with the exception of a variation to Clause D1.11 Building Envelope, Clause D1.14 Landscaped Area - Environmentally Sensitive Land and Clause D1.9 Side and rear building line. These variations are not considered to result in unacceptable environment or amenity impacts, with the development achieving the objectives of the relevant clause.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal (as amended) is a suitable and an acceptable development for the subject site for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

This application seeks development consent for the alterations and additions to an existing dwelling house.

Specifically, the works comprise of the following:

- Demolition and internal reconfigurations works;
- Extension to the rear ground floor deck;
- External access stairs;
- Extension to the first floor to accommodate a new bedroom, walk in robe, bathroom and new balcony;
- Window amendments or additions, including the addition of two skylights to the roof; and
- Material change to the existing roof form, from roof tiles to roof metal sheeting.

ASSESSMENT INTRODUCTION

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

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

proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - B6.7 Transport and Traffic Management
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D1.5 Building colours and materials
Pittwater 21 Development Control Plan - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D1.11 Building envelope
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 5 DP 237925 , 108 Cabarita Road AVALON BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Cabarita Road. The subject site is legally identified as Lot 5 in Deposited Plan 237925, 108 Cabarita Road, Avalon Beach. The site is irregular in shape with a frontage of 19.81 metres and a depth of 36.765 metres. The site has a surveyed area of 695.5m². The site is located within the C4 Environmental Living zone under the provisions of the Pittwater Local Environmental Plan 2014 and accommodates a dwelling house and swimming pool. The site benefits from a Right of Carriage through No. 106 Cabarita Road, Avalon Beach for vehicular access. The site topography slopes downward from west to east by approximately 9.0 metres. The site consists of various forms of vegetation, and a canopy tree to the western front façade of the dwelling house. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by dwelling houses of various architectural designs within a landscaped setting.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time.

Current Application History

The development application was notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan and resulted in no submissions.

Council requested amended plans and additional information to address the following concerns:

- **Shadow Diagrams:** The DCP requires that Shadow diagrams must be submitted for all new developments that will result in additional shadow impacts, to demonstrate compliance with the requirements of the Pittwater 21 Development Control Plan.
- **Clause 4.3 Height of Buildings of the Pittwater Local Environmental Plan 2014:** The proposed first floor extension did exhibit a variation of approximately 0.8m to the clause requirements, which is not supportable by Council. It is noted that the proposal is accompanied by a Clause 4.6, and that the existing dwelling exhibits a building height of 9.95 metres. However, it was apparent that a more skillful design that provides scope to reduce the non-compliance to the first-floor extension.
- **Secondary Dwelling/Dual Occupancy:** It is noted that the proposal has the potential to facilitate a secondary dwelling or dual occupancy, within the subfloor level. Which allows for separate access and a new proposed bathroom. Confirmation was needed whether the proposal intends to build an additional separate occupancy within the existing dwelling. If this is so, then the application shall be updated and re-notified to reflect this.

Four sets of amended plans were received. The first on 2 February 2023, and the second on 7 March 2023 to address the above concerns. The third set was received on 28 March 2023, which included an additional section to accurately assess the building height. Finally, the last set was received on the 31

March 2023, which was to include boundary lines to all proposed floor plans.

Formal re-notification was not required due to a reduction in environmental impacts and further clarification on the design.

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)(iiia) – 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 recommended 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 Shadow Diagrams and Clause 4.3 Building Height of the Pittwater Local Environmental Plan 2014. <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 recommended 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 recommendation condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a recommended condition of consent.

Section 4.15 Matters for Consideration	Comments
	Clause 69 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 recommended 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 Pittwater 21 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 15/11/2022 to 29/11/2022 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>Supported, subject to conditions.</i> Council's Landscape Referral is assessed against the Pittwater Local

Internal Referral Body	Comments
	Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D1 Avalon Beach Locality 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. Landscape Referral raises concern that the proposed development does not achieve the 60% landscaped area under the P21DCP requirement, and this matter shall be assessed and determined under merit consideration by the Assessing Planning Officer. It is noted that there is an existing non-compliance which will be slightly further reduced. The proposed alterations and additions are mainly contained to the existing dwelling footprint and the proposed deck will be situated over the existing driveway. No trees are proposed to be removed and all trees and vegetation shown to be retained shall be protected as per the requirements outlined in the conditions of consent. Planner Note: A landscaped area assessment occurred, the existing landscape area will remain as existing, and will not result in a reduction.
NECC (Bushland and Biodiversity)	<i>Supported, subject to conditions.</i> The proposal seeks approval for alterations and additions to a dwelling house. The proposal has been assessed against the following provisions: • NSW Biodiversity Conservation Act 2016 • SEPP (Resilience and Hazards) 2021 - Chapter 2 Development within the coastal environment • Pittwater LEP 14 - Clause 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR).

Internal Referral Body	Comments
	However, the submitted plans and documentation indicate that the proposed works are located outside of the BV Map area and therefore will not trigger entry into the BOS. The alterations and additions that are proposed will take place in highly disturbed areas of the site and therefore, impacts to native flora and fauna are unlikely.
NECC (Coast and Catchments)	<i>Supported, no conditions required.</i> 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. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone 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>. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. <u>Comment</u> On internal assessment, the DA satisfies requirements of the SEPP R&H. As such, it is considered that the application does/does not comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Pittwater LEP 2014 and Pittwater 21 DCP No other coastal related issues identified. 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.
NECC (Development Engineering)	<i>Supported, subject to conditions.</i> The proposal is for alterations and additions to the existing dwelling. The site falls to the rear and as such the stormwater management shall be in accordance with Section 5.5 of Council's Water Management for Development Policy. The submitted geotechnical

Internal Referral Body	Comments
	report addresses the DCP controls. No changes are proposed to the existing vehicular access. No objections to approval subject to conditions as recommended.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported, subject to conditions.</i> 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. A462704_04 dated 6 March 2023).

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.
- 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 proposal has been reviewed by Council's Coastal, Biodiversity and Landscape Officers, who are in support of the proposed works, subject to recommended conditions, which will mitigate any potential impacts.

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

As mentioned above, the development is unlikely to create unacceptable impacts to the foreshore or waterway areas and will not detract from the scenic quality of the locality, maintaining an appropriate visual relationship with the surrounding built environment.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	First Floor Extension: 8.5m Skylight Addition: 9.1m	- 7.06%	Yes No (Refer to Clause

		Window Addition: 9.4m Existing Building/ Replacement Roof: 9.95m	10.6% 17.06%	4.6) No (Refer to Clause 4.6) No (Refer to Clause 4.6)
--	--	--	-----------------	--

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
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The C4 - Environmental Living zone objectives are addressed below:

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

Comment

The proposal consists of replacing the existing roof tiles to roof metal sheeting, the construction of a first floor extension, ground floor deck extension, various internal reconfigurations and window additions, that have been designed to complement the surrounding natural and aesthetic values of the site. The proposal is considered to be of low impact, despite the building height non-compliance (refer to *Clause 4.6 Exceptions to development standard*, elsewhere in the report).

The subject site is located within the Department of Planning and Environment's Biodiversity Values Map (BV Map), however it is noted that the proposed works are located outside of the BV Map area and does not include the removal of any significant vegetation. Majority of the works are located upon or within the existing building footprint, in an existing disturbed area of the site. The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021, however these areas will not be impacted upon in a detrimental manner as stated by Council's Coastal Officer.

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

Comment

Recommended conditions have been included by Council's Biodiversity and Landscape Officers

to ensure that any potential impacts to the site are minimised.

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

Comment

The proposal includes a low density development design that is compatible with surrounding properties. The proposal retains the existing surrounding vegetation and landscape buffer located within the front setback area, which will continue to soften the built form.

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

Comment

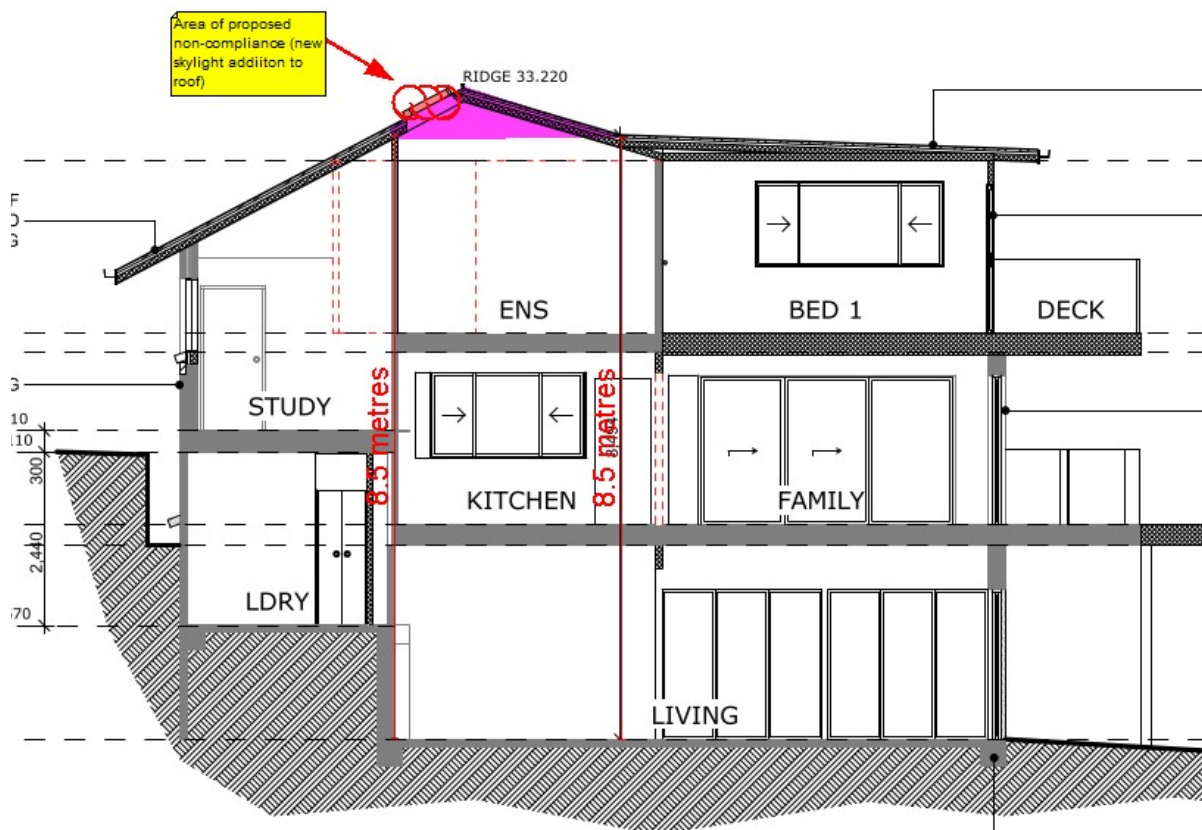
Councils Biodiversity Officer has reviewed the proposal and support the development subject to recommended conditions to ensure that any impacts to the native wildlife corridors are also minimised.

4.6 Exceptions to development standards

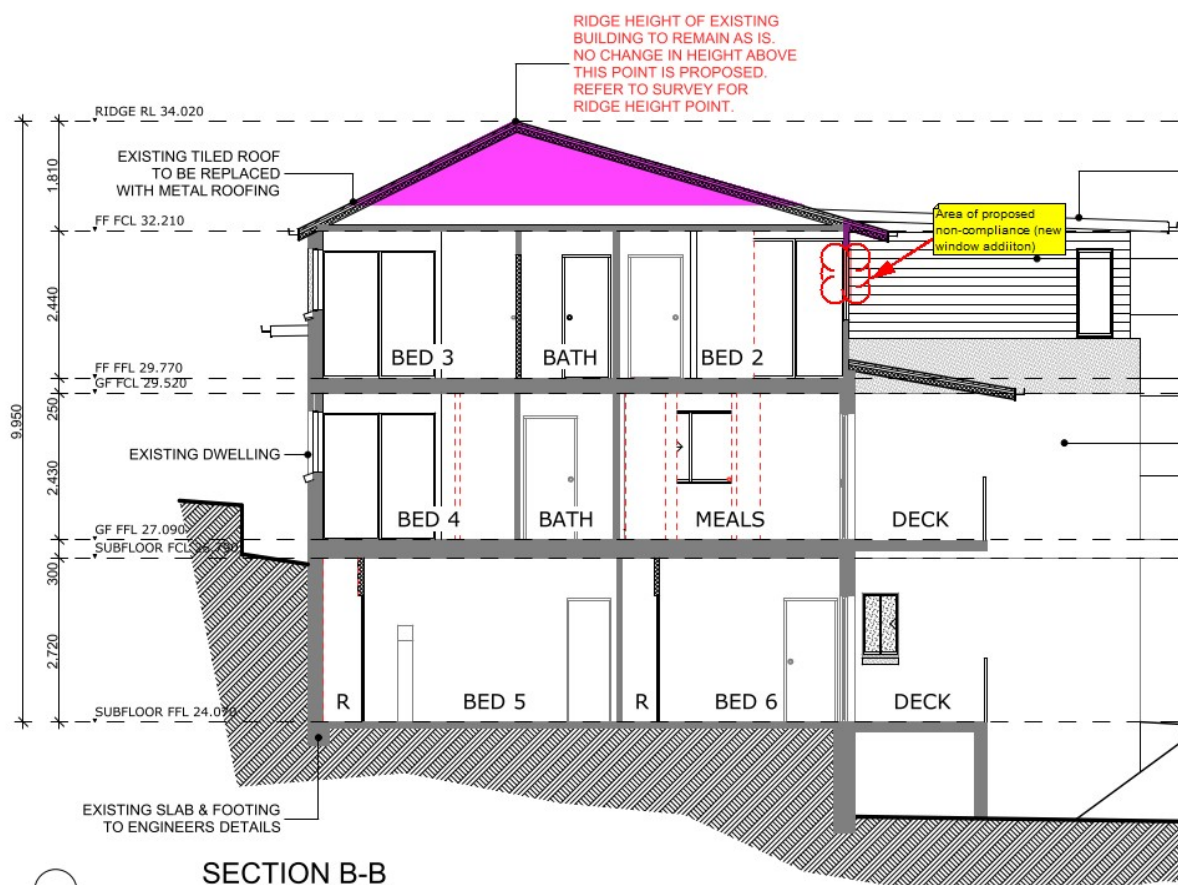
Description of Non-Compliance

Development standard	Height of buildings
Requirement	Max: 8.5 metres
Proposed	Max: 9.95 metres The non-compliance directly relates to the retention of an already existing building height of 9.95 metres, and an addition of a skylight and additional windows, located above 8.5 metres.
Percentage variation to requirement	17.06%

An extract of the submitted architectural plans showing the extent of non-compliance is shown below:



(Figure 1 - Section A-A: Extent of existing non-compliance shown in pink, proposed non-compliance shown in red.)



(Figure 2 - Section B-B: Extent of existing non-compliance shown in pink, proposed non-compliance shown in red.)

compliance shown in red.)

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:

- *"The proposed first floor addition complies with the maximum permitted building height however the existing built form that it being retained as part of the development has a height of 9.95m requiring a variation to the height of buildings provisions.*
- *The non-compliance is the direct result of the development retaining the existing non-compliant building height and the topography of the allotment. With a moderate fall through the site, it is difficult to retain the existing development without a level of non-compliance to the height*

provision.

- *The required variation will not detrimentally impact on the amenity of the adjoining properties given the articulated design, adequate side and rear setbacks and building separation distances along with the reasonable level of solar access to living areas and private open space areas of the adjoining properties.*
- *The windows proposed to the first floor extension have been appropriately offset from neighbouring windows and are able to be screened via landscaping to ensure they do not present opportunities for overlooking.*
- *The façade and material choices of the proposed development are in keeping with the existing dwelling and complement the existing character of the street which contains two and three storey dwellings of varied architectural styles.*
- *Remains below the maximum ridge height of the existing dwelling to ensure it will not pose detrimental impacts to the dwelling's overall streetscape appearance.*
- *Reducing the overall building height of the existing dwelling is not considered feasible as the reduction in existing built form height would detrimentally impact the amenity of the development and render re-development of the dwelling unviable.*
- *Whilst the existing dwelling is numerically non-compliant with the height of buildings control, the proposed addition is provided with a compliant building height and is not anticipated to detrimentally impact the streetscape or surrounding developments by way of solar access or privacy."*

The proposal is consistent with the locality and surrounding developments within the immediate vicinity that are of similar height and scale. The proposal is considered to be an appropriate design to preserve the low density residential setting and landscaped environment, with amenity impacts to surrounding development being acceptably mitigated.

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 proposal includes a first floor extension that is compliant with the building height standard of 8.5 metres, and will be situated below surrounding tree canopy. The non-compliance directly relates to the retention of an already existing building height of 9.95m which will however replace the materials of the roof, but maintain the roof form/design. A addition of skylights and additional window, are also located above the building height standard of 8.5m, but below the existing building height of 9.95m.

As the non-compliance is generally existing, and the landscaping and screen planting on site will be retained, the proposal is considered to maintain a primarily a low-density residential design within a landscaped setting. This is consistent with the desired character of the Avalon Beach locality.

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

Comment

The surrounding development along Cabarita Road, primarily the properties on the low side of the street present dwelling house designs of two (2) and three (3) storeys that encroach the building height standard of 8.5m, with immediate properties exhibiting roof ridge heights of approximately RL 33.70 and RL 34.86. As mentioned above, the majority of the non-compliance (in exception of window additions and roof material change) is as existing, and will not be altered or encroach above the existing roof ridge height of RL 34.020. the proposal demonstrates consistency in way of height and spatial proportions when compared to the properties within the immediate vicinity.

c) to minimise any overshadowing of neighbouring properties,

Comment

The proposal is accompanied by shadow diagrams that are compliant with the relevant clause requirements.

d) to allow for the reasonable sharing of views,

Comment

As the proposal is retaining the original roof form and roof ridge height (in exception of a material change and addition of skylights), it is not considered that any unacceptable view loss impacts shall occur.

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

Comment

The proposal has taken in consideration the topography of the land, by locating the first floor addition in an area that would not result in a building height encroachment. The retention of the existing roof form that exhibits a building height non-compliance will not alter or impact the the natural topography of the land, as it will remain as existing.

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

Comment

The subject site is not a heritage item, is not located in close proximity to a heritage item and is not located within a heritage conservation area. Therefore, the proposal will not adversely impact any development of heritage significance. In addition, the development will not facilitate the removal of any significant vegetation, or excavation of the existing topography.

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 consists of replacing the existing roof tiles to roof metal sheeting, a first floor extension, addition of a new deck, various internal reconfigurations and window additions, that have been designed to complement the surrounding natural and aesthetic values of the site. The proposal is considered to be of low impact, despite the building height non-compliance (refer to Clause 4.6 Exceptions to development standard, elsewhere in the report). The subject site is located within the Department of Planning and Environment's Biodiversity Values Map (BV Map), however it is noted that the proposed works are located outside of the BV Map area and does not include the removal of any significant vegetation. Majority of the works are located upon or within the existing building footprint, in an existing disturbed area of the site. The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021, however these areas will not be impacted upon in a detrimental manner as stated by Council's Coastal Officer.

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

Comment

Recommended conditions have been included by Council's Biodiversity and Landscape Officers to ensure that any potential impacts to the site are minimised.

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

Comment

The proposal includes a low density development design that is compatible with surrounding properties. The proposal retains the existing surrounding vegetation and landscape buffer

located within the front setback area, which will continue to soften the built form.

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

Comment

Councils Biodiversity Officer has reviewed the proposal and support the development subject to recommended conditions to ensure that any impacts to the native wildlife corridors are also minimised.

Conclusion

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

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies.

(3) The consent authority must consider the below matters to decide whether or not the development takes into account all geotechnical risks.

- (a) site layout, including access,***
- (b) the development's design and construction methods,***
- (c) the amount of cut and fill that will be required for the development,***
- (d) waste water management, stormwater and drainage across the land,***
- (e) the geotechnical constraints of the site,***
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.***

Comment

As the land is classified as "Geotechnical Hazard H1", the proposed development was accompanied by a geotechnical risk assessment and certified forms as set out in Council's Geotechnical Risk Management Policy for Pittwater relating to the potential impact of excavation on land stability. It is noted that no major cut or fill will take place under this development consent. Conditions however have been recommended to ensure that all recommendations (if any) included in the geotechnical risk assessment referenced in Condition 1 of this consent are required to be complied with during works, to ensure geotechnical risk is mitigated appropriately.

Conditions have also been recommended to ensure the satisfactory drainage and management of stormwater and wastewater.

(4) Development consent must not be granted to development on land to which this clause applies unless:

(a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and

Comment

As mentioned above, conditions have been recommended to ensure the satisfactory drainage and management of stormwater. Council's Development Engineer has also reviewed the proposal and is in support, subject to recommended conditions.

(b) the consent authority is satisfied that:

(i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or

(ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or

(iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.

Comment

In light of the above comments, it is considered that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front Building Line	6.5m Western Boundary	Dwelling: 8.3m Front Porch: 7.8m	-	Yes
Rear Building Line	6.5m Eastern Boundary	Dwelling: 11.6m Deck : 6.5m	-	Yes
Side Building Line	2.5m Northern Boundary	Existing Dwelling: 6.6m Deck: 5.0m Proposed First Floor Extension: 6.9m External Staircase: 1.0m	- 60.0%	Yes No
	1.0m Southern Boundary	Existing Dwelling: 1.0m Deck: 4.6m Proposed First Floor Extension: 5.1m	-	Yes
Building Envelope	3.5m Northern	Proposed Works: Within Envelope	-	Yes

	Envelope			
	3.5m Southern Envelope	Proposed Works: Outside Envelope	Max: 37.1%	No
Landscaped Area	60.0% (417.3m ²)	35.7 % (248.3m ²)	40.5% (169.0m ²)	No (Existing non-compliance) No further reduction in landscaped area proposed

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
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
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	No	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
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	No	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
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	No	Yes
D1.8 Front building line	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D1.21 Masterplan - Careel Bay	Yes	Yes
D15.22 Masterplan - Careel Bay	Yes	Yes

Detailed Assessment

B6.7 Transport and Traffic Management

A condition has been recommended requiring the applicant to submit a Construction Traffic Management Plan that shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate. This is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems i.e. Right of Carriageway.

C1.5 Visual Privacy

Merit Consideration

Clause C1.5 requires that habitable rooms and outdoor living areas of dwellings optimise visual privacy through an appropriate design outcome. Private open space areas including swimming pools and living rooms of the proposal, and any existing adjoining dwellings are to be protected from direct overlooking within 9.0m, through the use of privacy screens or another similar design element.

The proposed upper ground deck extension and first floor balcony are located to the rear of the dwelling, however they are within 9.0m of the southern adjoining neighbour (No. 110 Cabarita Road). It is noted that No. 110 Cabarita Road is located behind the subject site's dwelling house, however downward or backward viewing into the property could still occur. To prevent any unacceptable privacy impacts as a result, both the upper ground floor deck and first floor balcony shall be required by recommended condition to provide a privacy screen to the southern end with a height of 1.65m.

The property to the north (No. 96 Cabarita Road) is located more than 9.0m from the proposed works, with a Right of Carriageway in between. This property will not be impacted.

The property to the east (No. 15 Careel Bay Crescent), is located below the subject site, with the dwelling house being orientated in an easterly and northerly direction, towards the favourable ocean views of Pittwater. No. 15 Careel Bay Crescent consists of an elevated deck/alfresco area, attached to the dwelling house, which is located approximately 9.0m from the proposed deck and balcony of the subject site. The proposed works under this application are also orientated towards the east, with the viewing direction being up and out towards the ocean views, rather than down into the eastern property. Overgrown vegetation and trees are situated between both these properties, which will also aid in obstructing any potential downward viewing and shall protect the privacy levels of the eastern adjoining neighbour. No further privacy measures are considered necessary.

Subject to recommended conditions, the privacy impacts are considered to be reasonable within a residential environment.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control

have been achieved. Therefore, the application is supported on merit.

D1.5 Building colours and materials

Clause D1.5 Building Colours and Materials require that buildings are to utilise medium to dark colour ranges with natural and earthy tones.

The proposed development indicates that the primary materials for the dwelling house are to consist of a medium colour scheme (i.e. mid grey) for the external wall cladding and roof metal sheeting.

However, the window and door architraves are proposed to be of a light colour scheme (e.g. surfmist). Given this would be a minor portion of the development, which is not considered to visually dominate or disrupt the existing character of the area within the immediate vicinity, the proposed lighter colour is considered acceptable in this instance.

A condition is to be recommended to ensure the proposed roof and wall cladding will maintain a medium to dark range (BCA classification M and D) and that any roof with a metallic steel finish is not permitted in order to minimise solar reflections to neighbouring properties.

D1.9 Side and rear building line

Description of Non-Compliance

Clause D1.9 Side and Rear Building line prescribes a side setback of 2.5m to one side and 1.0m to the other, with a rear setback of 6.5m. For this assessment, the 2.5m side building line is applied to the northern boundary and the 1.0m side building line applied to the southern boundary. The rear setback is applied to the east.

The development is compliant with the above requirements, in exception of an external staircase, which exhibits a side setback of 1.0m to the northern boundary, where 2.5m is required.

Merit Consideration

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

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

Comment

The proposed external staircase will not disrupt the locality of the area. The proposal overall will maintain a low density residential dwelling house, with a landscaped front façade.

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

Comment

The staircase will link the pool area to the lower ground floor/driveway, and is considered lightweight in design. The staircase is located at the rear and side of the house, and will not be viewed from the street, with its location adjacent to a right of carriageway.

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

Comment

This encroachment into the side setback area is not considered to result in any unreasonable view loss from surrounding private properties or the public domain.

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

Comment

The staircase location, is not considered to negatively impact on the current view sharing of the adjoining properties.

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

Comment

The staircase will not unreasonably impede on the amenity or privacy to the neighbouring properties, as it is not located in close proximity to any adjoining dwellings. Solar Access is compliant with the relevant clause requirements.

- ***Substantial landscaping, a mature tree canopy and an attractive streetscape.***

Comment

Vegetation and established trees have been retained with adequate space for future planting, providing a sufficient level of landscaping. The proposed pergola will not impact the streetscape having been located towards the rear of the dwelling and will sit below mature tree canopy height.

- ***Flexibility in the siting of buildings and access.***

Comment

The addition of an external staircase from the parking area and lower ground floor area to the upper ground floor area will provide for improved access and flexibility .

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

Comment

As previously mentioned, the existing vegetation and the established trees are to be retained and will act to mitigate any perceivable bulk and scale, in relation to the proposed staircase and overall dwelling.

- ***A landscaped buffer between commercial and residential zones is achieved.***

Comment

The subject site is located in and is surrounded immediately by either environmental protection or residential zones, this outcome does not apply.

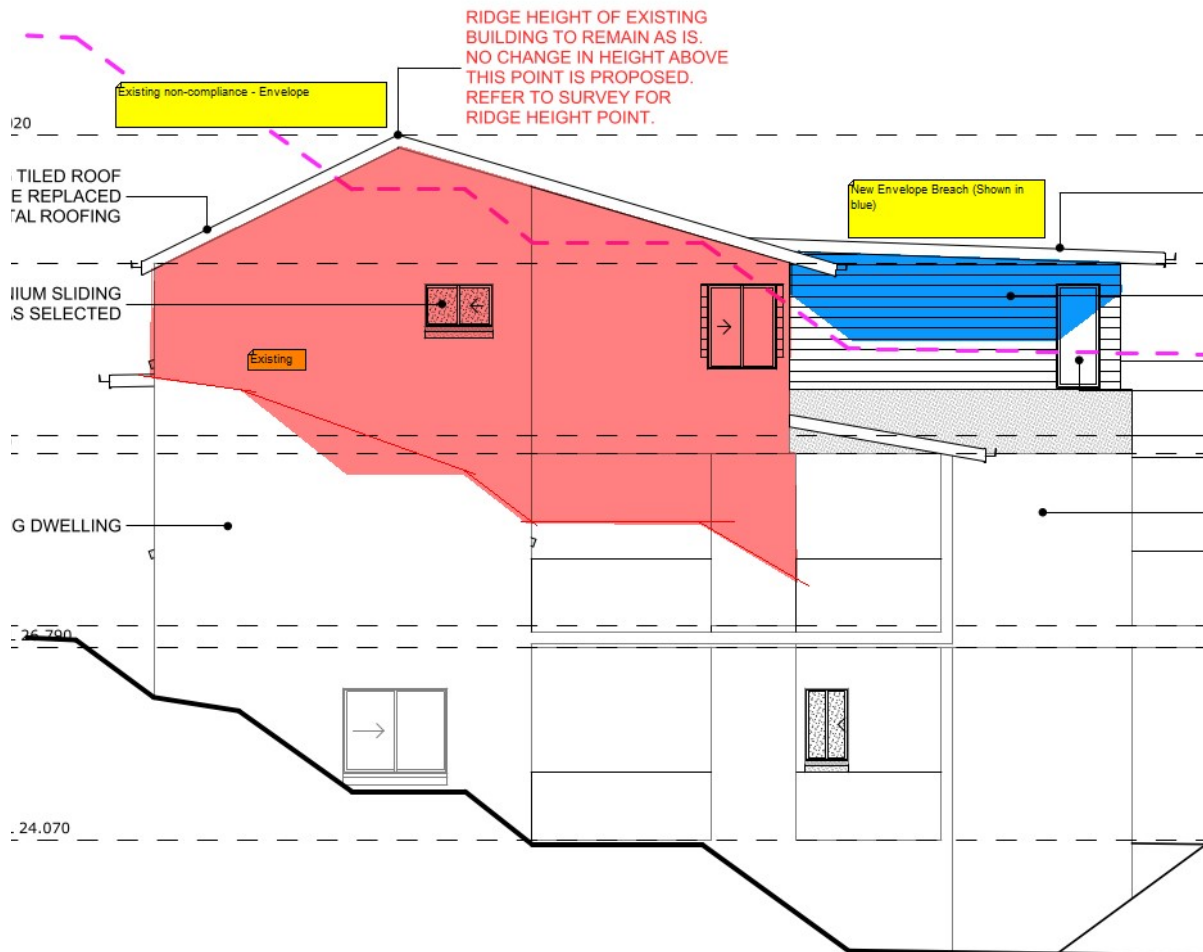
Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

D1.11 Building envelope

Description of Non-Compliance

Clause D1.11 Building Envelope require development to be sited within a 3.5m building envelope to ensure the bulk and scale of the built form is minimised.

The proposed development encroaches the side building on the southern elevation, exhibiting a maximum variation of 48.6% to the clause requirements (shown in blue below). It is noted that the existing dwelling house consists of an existing non-compliance to the building envelope on the southern elevation (shown in red below). The assessment of Clause D1.11 will however, only apply to the newly proposed works, and not the existing built form that will be retained.



(Figure 3: Proposed extent of envelope breach shown in blue, and existing shown in red)

The non-compliance can be contributed to the existing built form, which the first floor is built upon. The area where the proposed works are located, avoids the potential of further encroaching the building height. Amended plans were received which lowered the roof pitch, minimising the bulk and scale of this area. It is considered that the breach to the building envelope has been minimized, recognising that the breach is as a consequence of the positioning of the existing built form arrangement on site, which has been arranged to take advantage of a favorable aspect.

Merit Consideration

The Building Envelope is assessed on a merit basis and is considered against the underlying Outcomes of the Clause as follows:

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

Comment

The proposed development will maintain a low density residential design, located within a landscaped setting and will be situated below tree canopy height.

- ***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

Due to the retention of the landscaping within the front setback area, and surrounding canopy trees, the dwelling house is not easily viewed from the street. This streetscape will therefore not be significantly altered when compared to that of the existing.

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

Comment

The works will not require any significant excavation to facilitate the works, therefore resulting in minimal site disturbance. The proposed development is situated below the height of the surrounding tree canopy level of the locality. It is considered advantageous that the proposed development is located atop the existing building footprint, as doing so does not impact any ecologically significant parts of the site.

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

Comment

The bulk and scale of the building is consistent with that of surrounding properties within the street, particularly those located on the low side of Cabarita Road. The dwelling house will maintain the presentation of a two (2) storey house when viewed from the east and north, but rather a three (3) storey house when viewed from the south and west. This is a similar occurrence, when comparing dwelling houses within the immediate vicinity.

Notwithstanding, the design overall incorporates acceptable levels of articulation, particularly in relation to the proposed works. The retention of the existing style and roof form (in exception of the material change), will aid in visual interest and mitigation of bulk and scale. As mentioned above, the surrounding natural environment consists of canopy trees and other various forms of vegetation, which will aid in the visual softening and screening of the development.

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

Comment

The proposed extension (non-conforming element), exhibits a building height compliant with the required 8.5m. The existing dwelling house although replacing the existing roof, will maintain the roof design and building height of below 9.95m. As the roof design shall not change, it is not considered that any adjoining properties will experience unacceptable view loss impacts.

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

Comment

It is considered that the proposal provides adequate spatial separation between adjoining buildings, and has been accompanied with compliant shadow diagrams. The works are not considered to unacceptably impact upon the amenity or reduce privacy levels the to neighbouring properties.

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

Comment

The proposed works do not necessitate in the removal of any significant trees or plantings and is considered to continue to aid in the visual reduction of the the built form.

Having regard to the above assessment, it is concluded that the applicable outcomes of this control are achieved. Therefore, the application is supported on merit in this particular circumstance.

D1.14 Landscaped Area - Environmentally Sensitive Land

The subject site presents an existing non-compliant landscaped area of 35.7% or 248.3m², where 60.0% or 417.3m² is required.

The proposed works will not increase or alter the numerical non-compliance, with the works being located upon the existing building footprint, within the dwelling house or within existing impervious areas.

As such, a detailed merit assessment is therefore not required, in this instance.

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 \$9,570 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$957,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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.

PLANNING CONCLUSION

This proposal for the alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10.0% to *Clause 4.3 Height of Buildings* under the provision of the *Pittwater Local Environmental Plan 2014* (PLEP 2014).

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

Amended plans were requested by Council, re-notification was not required due to a reduction in environmental impacts and further clarification on the design. It is considered that the fourth set of amended plans received, addressed the planning issues identified in the initial assessment, which form the basis of this report.

On balance, and considering the preceding detailed assessment of the application, including a detailed analysis of the variation to Clause 4.3 of the PLEP 2014, it is considered that the 'amended' proposal, subject to recommended conditions will result in a development that is acceptable in design, and will not detrimentally impact the character or amenity of the area or adjoining properties

Therefore, proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. Accordingly, the application is referred to the DDP with a recommendation for **approval**.

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

It is considered that the proposed development satisfies the appropriate controls and that all processes

and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary 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 DA2022/1875 for Alterations and additions to a dwelling house on land at Lot 5 DP 237925, 108 Cabarita Road, AVALON BEACH, 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
No. 101, Site Plan, Revision B09	31 March 2023	Spannenberg & Son
No. 201, Subfloor, Revision B09	31 March 2023	Spannenberg & Son
No. 202, Ground Floor, Revision B09	31 March 2023	Spannenberg & Son
No. 203, First Floor, Revision B09	31 March 2023	Spannenberg & Son
No. 301, Subfloor, Revision B09	31 March 2023	Spannenberg & Son
No. 302, Ground Floor, Revision B09	31 March 2023	Spannenberg & Son
No. 303, First Floor, Revision B09	31 March 2023	Spannenberg & Son
No. 401, Elevations, Revision B09	31 March 2023	Spannenberg & Son
No. 402, Elevations, Revision B09	31 March 2023	Spannenberg & Son
No. 403, Elevations, Revision B09	31 March 2023	Spannenberg & Son
No. 501, Section & Details, Revision B09	31 March 2023	Spannenberg & Son

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Basix Certificate (No. A462704_04)	6 March 2023	Spannenberg & Son P/L
Geotechnical Investigation (Ref. J4586)	19 October 2022	White Geotechnical Group

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	-	Sketch Studio 77 Pty. Ltd.

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	21 November 2022

(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 \$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.) 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 \$9,570.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$957,000.00.

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

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

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

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

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

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

7. Stormwater Disposal from Low Level Property

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular Section 5.5 Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's Water Management for Development Policy are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 19/10/2022 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

10. **Amendments to the approved plans**

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

a) **Upper Ground Floor Deck:** A privacy screen is to be installed along the southern edge of the upper ground floor "Proposed Deck" as shown on the approved plans, for a length of 3.4m, with the starting point being the edge of the dwelling house. The screen is to have a minimum height of 1.65 metres above the finished floor level. The privacy screen shall be of fixed opaque panels or angled louver style construction (with a maximum spacing of 20mm), in durable materials that complement the design of the dwelling.

b) **First Floor Deck:** A privacy screen is to be installed along the entire length of the southern edge of the first floor "Deck" as shown on the approved plans, to a minimum height of 1.65 metres above the finished floor level. The privacy screen shall be of fixed opaque panels or angled louver style construction (with a maximum spacing of 20mm), in durable materials that complement the design of the dwelling

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

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

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.

12. **External Finishes to Roof and Walls**

The external finish to both the roof and wall cladding 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.

13. 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.

14. Construction Traffic Management Plan

A Construction Traffic Management Plan is to be prepared for the development given its unusual access arrangements.

The Construction Traffic Management Plan shall include (but not be limited to) the following:

- i) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- ii) Details for maintaining access to adjacent properties and properties which benefit from the right of carriageway easement;
- iii) Details regarding the proposed method of access to and egress from the site for construction vehicles, and demonstration these vehicle will manoeuvre the right of way safely – i.e. enter and leave in a forward direction;
- iv) Details for storage of materials;
- v) Provision of parking for workers;
- vi) Details for loading and unloading of materials;
- vii) Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic;
- viii) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure; and
- ix) The location and operation of any on site crane.

The Construction Traffic Management Plan shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. Tree and Vegetation Protection

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

- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an 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 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 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 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 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 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 Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Principal Certifier must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property 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.

Reason: Tree and vegetation protection.

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. **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.

18. **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.

19. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

20. **Demolition Works - Asbestos**

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

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

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

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

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

21. **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.

22. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, 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.

23. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

24. **Right of Carriageway Access**

Construction vehicles and material are not to impede access for the properties that benefit from the right of way and turning area throughout the construction phase. The applicant must provide neighbours who use the right of way and turning area with contact details of the contractor in the event that access to the right of way is blocked.

Reason: To ensure access is available to all property owners who benefit from the right of carriageway during the construction phase.

25. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation.

Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

26. **Damage to the Right of Carriageway**

Any damage to the right of carriageway, caused by the construction of the development, is to be repaired prior to the issue of the occupation certificate.

Reason: To ensure the site is left in an acceptable state and that access is maintained for adjoining neighbours.

27. **Construction of works**

No construction access, materials, excavated materials or movement of workers or machinery shall occur from the Cabarita Road frontage of the site.

Reason: To protect the natural features of the site.

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

28. Stormwater Disposal

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

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

29. No Weeds Imported On To The Site

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2021 – 2026) 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.

30. Waste Management Confirmation

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

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

31. Geotechnical Certification Prior to Occupation Certificate

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

32. Swimming Pool Requirements (existing pool modified by works)

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

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

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

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

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

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

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

Reason: To protect human life.

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

33. **Landscape Maintenance**

The approved landscaped areas shall remain as planting.

All weeds are to be managed in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

34. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

35. **No Approval for a Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

Reason: To ensure compliance with the terms of this consent.