

21 October 2022



Development Determination Panel
Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

Via email: council@northernbeaches.nsw.gov.au

To whom it may concern,

Re: Response to Minutes of Development Determination Panel Meeting – Item 3.1 - DA2022/0033 at 30A Addison Road, Manly.

I write on behalf of Mr Shamia (Applicant) in response to the matters raised at the Development Determination Panel (DDP) meeting on dated 12 October 2022 in relation to Item 3.1 - DA2022/0033 at 30A Addison Road, Manly.

Determination of the matter as deferred by the DDP to allow for the following to occur:

- 1. Providing the applicant an opportunity to provide information in support of their application with regard to the considerations prompted by Clause 6.10 of the Manly LEP 2013. This supporting information may include a legal opinion as to the power available to the Consent Authority under Clause 6.10 when considering a new building. The applicant is provided 14 days from the date of publish of these minutes to submit information in support of Clause 6.10; and*
- 2. Defer the application for further assessment and preparation of a supplementary assessment report pending the applicant's response to (a) above; and*
- 3. The supplementary assessment report is to re-evaluate the application against the relevant considerations of Section 4.15 of the Environmental Planning and Assessment Act 1979, and*
- 4. At such time that the supplementary assessment report is complete, it be publicly exhibited for a period of 7 days and then brought back before the DDP for a further public meeting where it may be publicly addressed on any new matter or issue arising from the supplementary assessment report, not already covered in the original assessment report.*

With regard to the matters raised in relation to clause 6.10 of MLEP 2013, I proffer the following response:

LIMITED DEVELOPMENT ON FORESHORE AREA

The foreshore building line bisects the site at a distance of approximately 16.3m from the rear property boundary (MHWM) on the northern side boundary and 17.2m from the rear property boundary (MHWM) on the southern side boundary, as shown in **Figure 1**, below.



Figure 1 – Extract of Foreshore Building Line Map of MLEP 2013
Source: ePlanning Spatial Viewer

The application proposes to rebuild a new dwelling at the subject site, partly seaward of the foreshore building line, within the foreshore area, as shown in **Figure 2**.

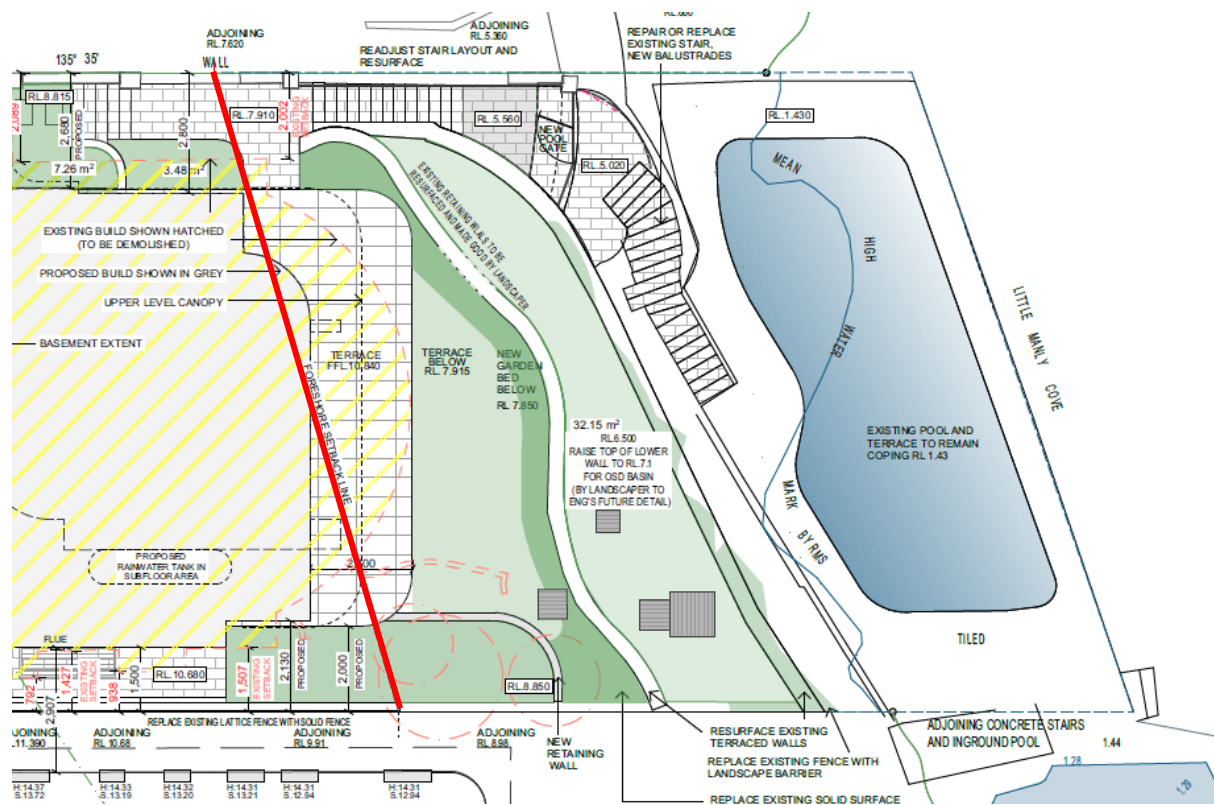


Figure 2 - Extract of Site Plan (DA 02, revision M) with foreshore building line highlighted in red
Source: Chateau Architects + Builders

The extent of works within the foreshore area are identified, as follows:

- Construction of a three storey dwelling partly within the foreshore area,
- New retaining wall and resurfacing of existing retaining walls,
- Resurfacing of existing waterway access stairs,
- Stormwater infrastructure, and
- Upgraded swimming pool fencing and gates.

In accordance with the provisions of clause 6.10(2) of MLEP 2013, development consent must not be granted to development on land in the foreshore area except for the following purposes:

- a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,*
- b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*
- c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

At the DDP meeting on 12 October 2022, the panel highlighted that Council does not support reliance upon part (a) of this clause, as the application does not seek to rebuild an existing building, but rather proposes to construct a new building.

In the event that this position is maintained in the revised assessment report, the proposed development may also be supported pursuant to part (b) of this clause, as the erection of the proposed building partly within the foreshore area is appropriate for the following reasons:

- The proposed dwelling is generally maintained within the footprint of the existing dwelling, where site disturbance and terracing/levelling has already occurred. The siting of the existing dwelling forward of the foreshore building line is reasonably considered to be an exceptional feature of the existing site.
- As the proposed development is generally maintained within the footprint of the existing dwelling, impacts upon the amenity of adjoining properties are appropriately minimised.
- The siting of the proposed dwelling is responsive to that of adjoining development and provides an appropriate transition between the properties to the north and south, as shown in **Figure 3**.
- The siting of the development partially forward of the foreshore building line is not uncommon along this stretch of Addison Road, as shown in **Figure 4**.
- The resurfacing works to the existing retaining walls is proposed to enhance the visual amenity of the site and promote the use of natural materials within the foreshore area. The existing walls are generally unsightly and are not compatible with the high-quality aesthetic outcome that the development is seeking to achieve.
- New retaining walls within the foreshore area are designed to maintain existing/natural ground levels within the immediate vicinity of the side boundaries, to minimise potential impacts upon neighbouring properties.
- Stormwater infrastructure is proposed within the foreshore area, being the area downslope of the existing dwelling, in accordance with Council's Water Management Policy.

The refurbishment of existing waterway access stairs and fencing associated with the swimming pool is considered to be permitted by virtue of part (c) of this clause.

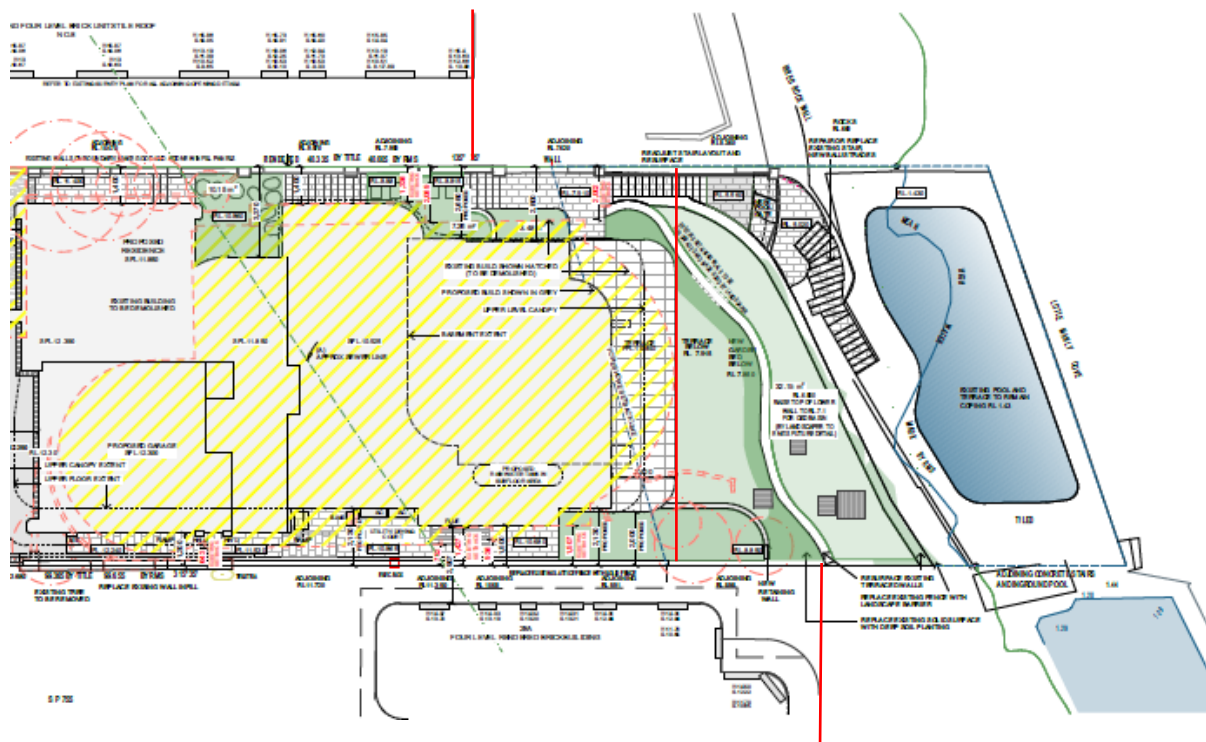


Figure 3 – The siting of the proposed development as seen in context with adjacent development
Source: Chateau Architects + Builders

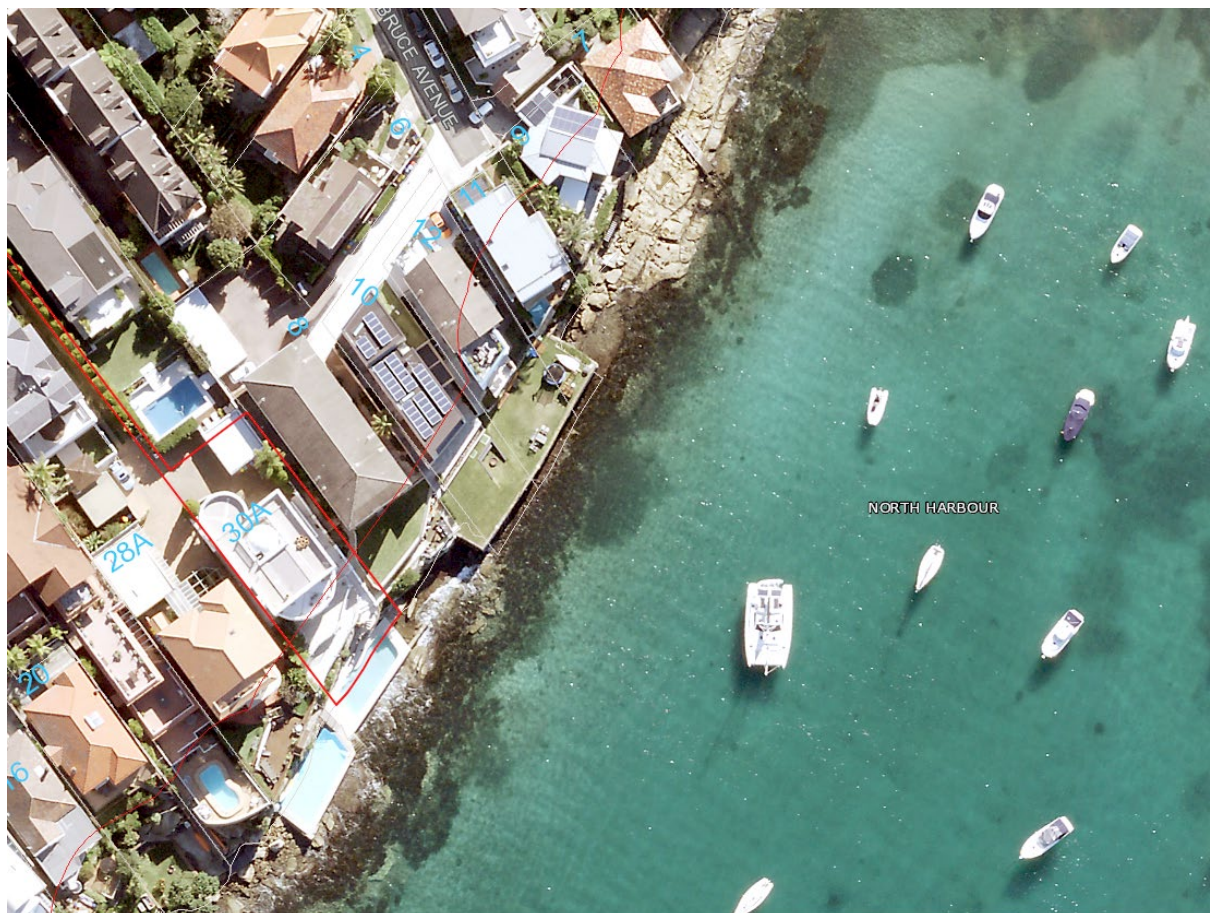


Figure 4 – The siting of development along Addison Road with respect to the foreshore building line
Source: Northern Beaches Council Mapping

Clause 6.10(3) of MLEP 2013 prescribes that development consent must not be granted unless the consent authority is satisfied of a list of matters prescribed. The DDP can be satisfied of these matters, as follows:

- a) *the development will contribute to achieving the objectives for the zone in which the land is located, and*

Comment: The site is located within the C4 Environmental Living zone. The proposed development provides a low-impact dwelling house that will not have any adverse impacts upon the ecological or aesthetic values of the foreshore. The portion of the development within the foreshore area will not detract from consistency with the objectives of the C4 zone.

- b) *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*

Comment: The proposed development will result in the significant enhancement of the foreshore area and the visual impact of the site as a whole. As the dwelling has been designed to step between existing adjoining development and is of a scale that is commensurate with that of surrounding built form, the resultant will not be jarring or out of character with the surrounding foreshore area.

- c) *the development will not cause environmental harm such as—*
a. *pollution or siltation of the waterway, or*
b. *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
c. *an adverse effect on drainage patterns, and*

Comment: The proposed development will not result in any adverse impacts upon the natural environment. It is noted that relevant referral staff at Council have completed their assessment with no concerns raised in this regard.

- d) *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*

Comment: The proposed development is wholly maintained on private land and will not impact upon access to or through the waterway. Further, the siting of proposed dwelling will not generate conflict between people using the adjoining waterway, with no new or additional impacts arising from the proposal compared with those associated with the existing dwelling.

- e) *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*

Comment: The proposed development does not alter existing access arrangements through the foreshore area.

- f) *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*

Comment: The site is not known to have any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance, noting that the site has also been developed.

The proposed development seeks to enhance the foreshore compared to that which currently exists.

- g) *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*

Comment: The proposed development will see a significant improvement to the visual amenity of the foreshore area, with stone cladding to be introduced to soften existing white rendered retaining walls and significant areas of concrete and paving replaced with landscaping.

- h) *sea level rise or change of flooding patterns as a result of climate change has been considered.*

Comment: The impacts associated with the proximity of the site to the waterway have been addressed. It is noted that Council's Coastal Team are generally supportive of the application and have provided conditions of consent.

It is important to note that the proposed development is not an isolated instance, with dwelling houses regularly proposed and approved by Council and the NSW Land and Environment Court (**Court**) within the foreshore area. The recent decision of the Court in the matter of *Joyce v Northern Beaches Council* [2022] NSWLEC 1445 in relation to the construction of a new dwelling house at 16 Addison Road, Manly, is of particular relevance in this instance.

As demonstrated in **Figure 5**, the new dwelling ultimately approved by the Court extended within the foreshore area, further seaward than the existing dwelling. The construction of a new dwelling within the foreshore area was supported, with reliance upon a Clause 4.6 Request, by Council staff, the NBLPP and the Court, with the following statement made at para. 25 of the judgement:

Part of the site is within the foreshore area as defined in the Manly LEP. The development complies with cl 6.10 of the Manly LEP which limits the type of development which might be carried out within the foreshore area.

The circumstances of this application (DA2021/1408) are not dissimilar to the circumstances of the subject application and serves as a highly relevant precedent that relates to land less than 40m from the subject site. I ask that the DDP adopt consistency with this recent precedent, where all parties including legal representatives and the Commissioner of the Court agreed that the construction of a new building within the foreshore area can be readily supported under the provisions of clause 6.10 of MLEP 2013.

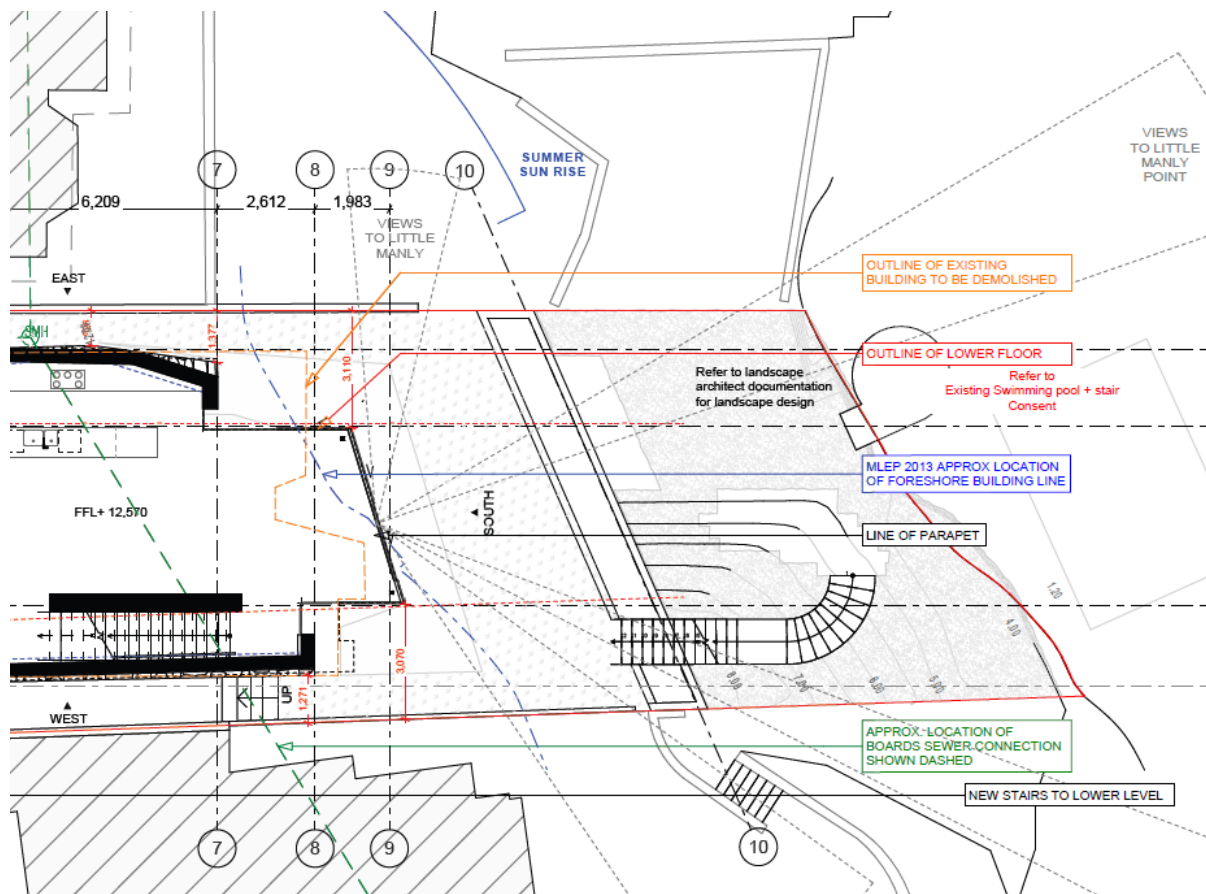


Figure 5 – The siting of development approved at 16 Addison Road, with the location of the foreshore building line indicated by the blue dashed line and the outline of the existing dwelling indicated by the orange dashed lines.

Source: Northern Beaches Council

Should you have any queries regarding the information above, please do not hesitate to contact me on 0472 65 74 74.

Yours sincerely,

Rebecca Englund

Rebecca Englund
Director | Northern Beaches Planning