

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/1755
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<b>Responsible Officer:</b>	Brittany Harrison
<b>Land to be developed (Address):</b>	Lot 2 DP 1014283, 152 Headland Road NORTH CURL CURL NSW 2099
<b>Proposed Development:</b>	Alterations and additions to a dwelling house including a garage, swimming pool and spa
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Melissa Ann Rowlands Luke Simon Rowlands
<b>Applicant:</b>	Signature Design & Drafting

<b>Application Lodged:</b>	30/09/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	14/10/2021 to 28/10/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 7.06%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 292,360.41
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### PROPOSED DEVELOPMENT IN DETAIL

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

Specifically, the works comprise of:

- Construction of a double garage within the front setback area;
- Alterations to the ground floor and first floor parents retreat;
- Construction of a pergola atop the existing upper floor balcony;
- Excavation and construction to accommodate for a swimming pool, spa and associated decking;

- and
- Construction of new access to the rear of the property including associated landscaping throughout the site.

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Development Control Plan - B1 Wall Heights  
 Warringah Development Control Plan - B3 Side Boundary Envelope  
 Warringah Development Control Plan - B5 Side Boundary Setbacks  
 Warringah Development Control Plan - B7 Front Boundary Setbacks  
 Warringah Development Control Plan - D7 Views  
 Warringah Development Control Plan - D8 Privacy

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 1014283 , 152 Headland Road NORTH CURL CURL NSW 2099
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Headland Road.</p> <p>The subject site is legally identified as Lot 30, Section A in Deposited Plan 8139, No. 152 Headland Road, North Curl Curl.</p> <p>The site is irregular in shape with a frontage of 12.205m and an average depth of 59.835m. The site has a surveyed area of 746.8m<sup>2</sup>.</p>

The site is located within the R2 Low Density Residential zone under the Warringah Local Environmental Plan 2011 and accommodates an existing dwelling house.

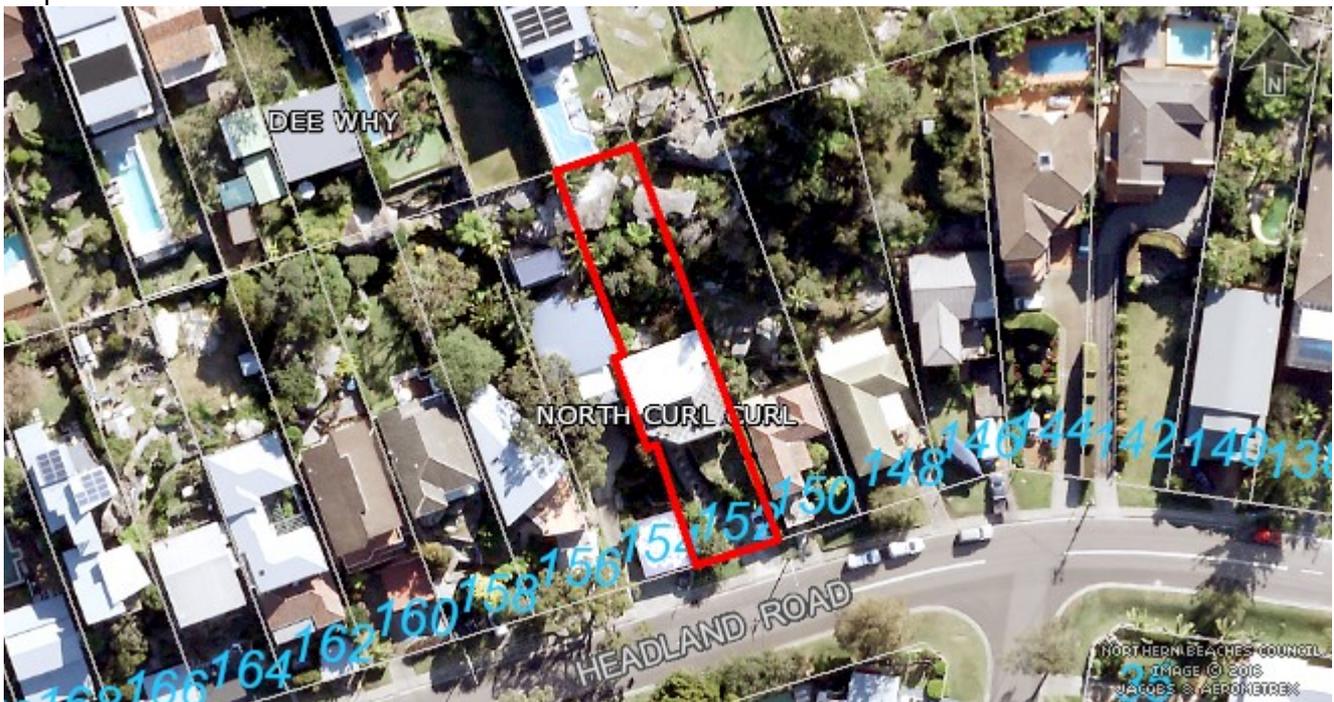
The site topography slopes downwards by approximately 21.26m from the north to the south.

The site currently consists of a well-maintained lawn area and garden beds to the front of the property. With a heavily vegetated rear yard, including topographical features such as rock outcrops to the north.

**Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by residential multi-story dwelling houses of various architectural designs.

Map:



**SITE HISTORY**

A search of Council’s records has revealed that there are no recent or relevant applications for this site.

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

**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
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Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Clause 4.3 Height of Buildings under the Warringah Local Environmental Plan 2011.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p>

Section 4.15 Matters for Consideration	Comments
	<p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 14/10/2021 to 28/10/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr Gerald McEwan Campbell Gilchrist	154 Headland Road NORTH CURL CURL NSW 2099

The following issues were raised in the submissions:

- **View Loss**
- **Building Height**
- **Overshadowing**
- **Side Building Envelope**

The above issues are addressed as follows:

- **View Loss**

Comment

Concerns were raised in relation to potential view loss from No. 154 Headland Road, caused by the proposed pergola. A view loss analysis has been conducted and has been addressed in detail elsewhere in this report, which was found to be acceptable. The discussions within *Clause D7 Views* provides for a detailed analysis in this regard.

- **Building Height**

Comment

The proposal has been supported by a written Clause 4.6 variation to the 8.5m Building Height Standard. For the reasons detailed within the assessment of Clause 4.6 Exceptions to Development Standards further in this report, the variation has found to be acceptable.

- **Overshadowing**

Comment

The detailed assessment of the proposal has no identified any unacceptable overshadowing that is caused by the proposed development, exhibiting compliance under *Clause D6 Access to Sunlight*.

- **Side Boundary Envelope**

Comment

The proposed development encroaches into the prescribed side boundary envelope on both the eastern and western elevations. Due to numerical variation with the control, a merit assessment has been undertaken against the objectives of that clause within the relevant section of this report, and found to be acceptable. Refer to *Clause B3 Side Boundary Envelope* for further detail elsewhere within this report.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application seeks consent for alterations &amp; additions to an existing dwelling, a detached garage and a swimming pool.</p> <p>Councils Landscape Referral section has considered the application against the Warringah Local Environmental Plan, and the following Warringah DCP 2011 controls:</p> <ul style="list-style-type: none"> <li>• D1 Landscaped Open Space and Bushland Setting</li> <li>• E1 Preservation of Trees or Bushland Vegetation</li> <li>• E6 Retaining unique environmental features</li> </ul> <p>The site contains significant rock outcrops and overhangs as detailed in the Geotechnical Report and plans. Though not mapped as High potential for Aboriginal sites of significance, referral to the AHO may be required to assess particular significance of these features.</p>

Internal Referral Body	Comments
	<p>However, the plans indicate that the proposal has been designed to retain and protect these significant features, generally located behind the proposed garage and in the rear portion of the site.</p> <p>No objections are raised with regard to landscape issues subject to conditions, including protection of rock features.</p>
NECC (Development Engineering)	<p>The proposed does not require OSD and connection of stormwater to the existing kerb outlet is satisfactory. The proposed driveway crossing is satisfactory subject to conditions.</p> <p>No objection to the proposal, subject to conditions as recommended.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>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.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

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

A BASIX certificate has been submitted with the application (see Certificate No. A400627\_07 dated 16 June 2022).

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

### SEPP (Transport and Infrastructure) 2021

#### Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the

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

#### Comment

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

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

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

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

### **Warringah Local Environmental Plan 2011**

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.322m (Pergola)	9.67%	No

#### Compliance Assessment

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

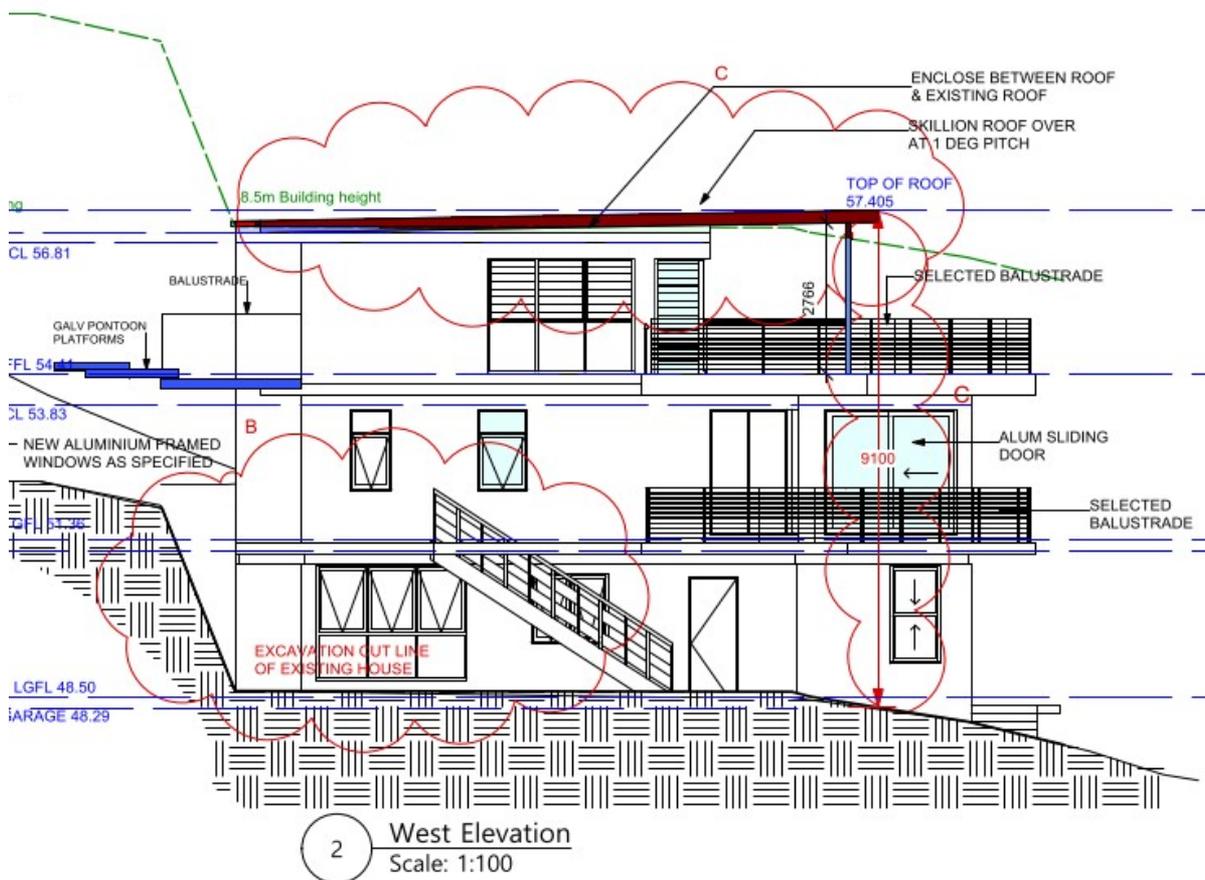
#### Detailed Assessment

#### 4.6 Exceptions to development standards

Description of Non-Compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.322m
Percentage variation to requirement:	9.67%

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



**(Figure 1: Western Elevation - Red Shading to indicate Building Height Non-Compliance of Proposed Development)**

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment

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

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

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

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

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

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

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

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

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

Comment

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

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

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

#### Comment

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- The Building Height variation is justified on the basis that the non-compliance is restricted to the western portion of the building, predominantly caused by the proposed pergola and skillion roof design.
- The variation is consistent with the surrounding properties that have substantial height and similar bulk and scale to the subject site and is compatible with the 2-3 storey character dominating Headland Road. With the non-compliance being imperceptible when viewed from the public domain and adjoining properties.
- With the existing location of the subject and adjacent dwellings enjoying an elevated position, impacts to view corridors and visual privacy have been minimised, the proposal also presents compliance with the solar access requirements.
- The result of the numerical non-compliance is predominantly caused by the steep sloping

topography of the land.

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 minimised.

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

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

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

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

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

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

#### Comment

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

#### **Objectives of development standard**

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

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

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

#### Comment

The proposed pergola and reconstructed roof form exhibits a height of RL 57.405 at its highest point. The adjoining western property presents a ridgeline of approximately RL 60.18, with the eastern adjoining property obtaining an approval for a dwelling house with a height of RL 55.467. Therefore, the proposal demonstrates consistency in way of design and spatial proportions with the properties within the immediate vicinity, maintaining an acceptable height and scale when compared to the existing 2-3 storey streetscape character.

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

Comment

Amended plans were received during the course of assessment which reduced the overall building height variation by amending the roof design and roof pitch, aiding in the mitigation of potential view loss impact to adjoining neighbours. In addition, a condition of consent has been recommended to increase the side setbacks of the proposed pergola to provide visual relief and open up the existing view corridor to the western neighbour No. 154 Headland Road. Privacy impacts in relation to the building height variation will remain as existing and will not further impact the adjoining neighbours, as no extension to the balcony is being proposed. Acceptable solar access has been provided to the open space areas of the adjoining properties, receiving the minimum requirement of access to sunlight.

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

Comment

As the proposed pergola and roof form is lightweight and designed to compliment the existing dwelling house and surrounding development, the scenic quality of Warringah's coast and bushland will be retained. In addition, the proposal consists of further soft landscaping throughout the site, exceeding compliance with the landscaping requirements.

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

Comment

As mentioned above, the proposal is designed to keep within the existing character of the area and existing dwelling house, when viewed from public places.

## Zone objectives

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

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

Comment

The proposal provides for the housing needs of the community by maintaining a low density residential design within the surrounding built environment,

It is considered that the development satisfies this objective.

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

Comment:

The proposal retains the residential use of the site and therefore this objective is not relevant.

It is considered that the development satisfies this objective.

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

Comment

The proposal presents quality landscaping and additional vegetation, with no significant canopy

trees being proposed for removal. Therefore, the development ensures that the landscaped setting of the surrounding natural environment is acceptably preserved.

It is considered that the development satisfies this objective.

### Conclusion

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

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

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

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

### **Warringah Development Control Plan**

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall Height	7.2m	East: 7.4m West: 8.2m	2.7% -	No No (As Existing)
B3 Side Boundary Envelope	5.0m Eastern Elevation	Outside Envelope	-	No
	5.0m Western Elevation	Outside Envelope	-	No
B5 Side Boundary Setbacks	0.9m Eastern Boundary	Nil (Proposed Garage)	100.0%	No
		0.1m (Retaining Wall)	22.0%	No
		0.7m (Proposed pergola)	-	Yes
		1.2m (First Floor Extension)	-	Yes
		1.6m (Proposed Swimming Pool)		
	0.9m Western Boundary	0.4m (Proposed Pergola)	-	Yes
		1.4m (Proposed Deck)		

B7 Front Boundary Setbacks	6.5m (Southern Boundary)	0.4m (Proposed Garage)	93.8%	No
B9 Rear Boundary Setbacks	6.0m Northern Boundary)	14.0m (Proposed Deck)	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40.0% (298.7m <sup>2</sup> )	56.5% (421.8m <sup>2</sup> )	-	Yes

### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

### Detailed Assessment

#### **B1 Wall Heights**

##### Description of Non-Compliance

Clause B1 states that wall heights are not to exceed 7.2 metres, when measured from ground level (existing) to the underside of the ceiling on the uppermost floor of the building.

The proposed development exhibits non-compliance to the numerical requirements, presenting a wall height of 7.4m to the eastern elevation, with a variation of 2.7%.

Note: The existing dwelling house, also presents numerical non-compliance to the requirements to the wall height along the western elevation, however the wall height measurement will remain unchanged to that of the existing and will not require further assessment.

##### Merit Consideration

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

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

##### Comment

The encroachment is caused by a minor first floor addition to the east and exhibits a complaint side setback and a vegetated side setback area, the development is likely to mitigate visual dominance in an acceptable manner, and is consistent with the surrounding buildings within the area.

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

##### Comment

Due to the steep topography of the subject site and placement of canopy trees, the proposed development presents a design that is sited below tree canopy height of the surrounding area.

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

##### Comment

The wall height encroachment to the eastern elevation is not considered to result in unacceptable view loss to the neighbouring properties or public domain. Refer to *Clause D7 Views* for further detail elsewhere within this report.

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

##### Comment

The eastern elevation will not impact on amenity due to the orientation and location of the dwelling house in relation to the adjoining eastern neighbour. Privacy is addressed in further detail elsewhere within the report under Clause *D8 Privacy*.

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

Comment

The proposed wall height non-compliance is located atop an existing dwelling house and does not consist of any excavation to the site retaining the natural landform.

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

Comment

The roof form of the dwelling house is presented as a low pitched skillion roof, consistent with the urban environment in the immediate vicinity.

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.

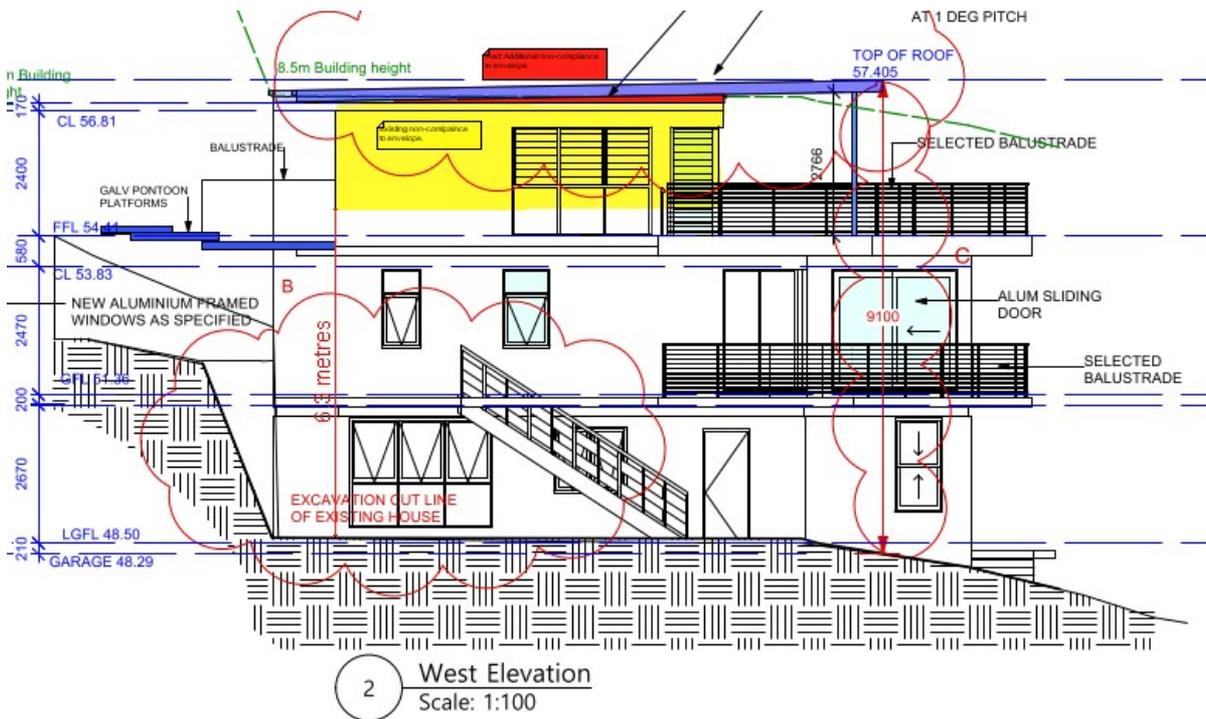
### **B3 Side Boundary Envelope**

Description of Non-Compliance

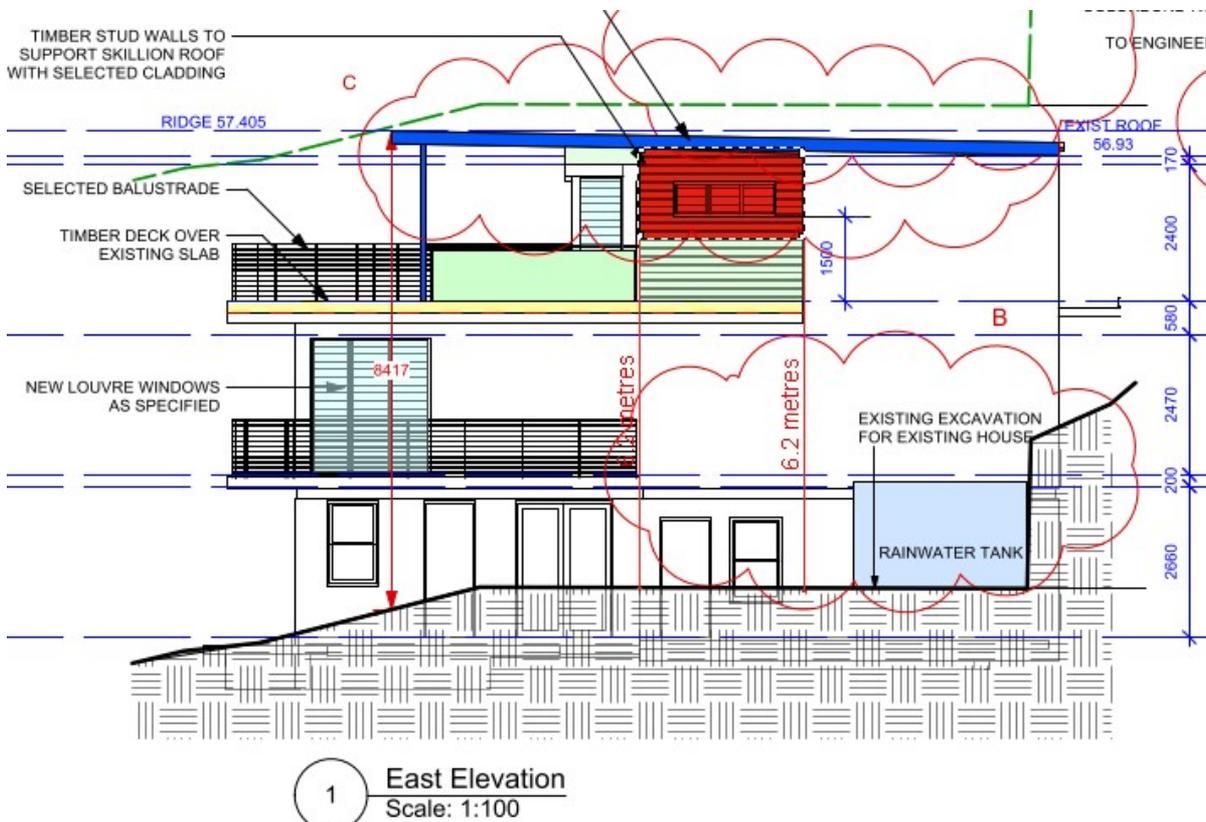
Clause B3 Side Boundary Envelope requires development to be sited within a 5.0m building envelope to ensure the bulk and scale of the built form is minimised.

The proposed development encroaches the side building envelope on the western elevation up to 1.5m for a length of 2.9m, and the eastern elevation up to 0.2m for a length of 6.9m. The encroachments are shown on the figures below in red shading.

Note: The existing dwelling house, also presents numerical non-compliance to the requirements to the side boundary envelope along the western elevation and is shown in yellow in the figures below. The assessment will only refer to the additional side boundary envelope encroachments.



(Figure 1: Side Building Envelope Encroachment to Western Elevation - Red Proposed Encroachment, Yellow Existing Encroachment)



(Figure 2: Side Building Envelope Encroachment to Eastern Elevation - Red Proposed Encroachment)

**Merit Consideration**

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

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

Comment

Due to the considerate front setback of the dwelling house to the street, the side building envelope encroachments are not considered to impact on the overall streetscape by virtue of height and bulk. The dwelling house exhibits compliance with the numerical requirements for side boundary setbacks, with the side setback area accommodating for existing and future vegetation, resulting in acceptable spatial separation and mitigation of visual dominance.

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

Comment

The encroachment to the side boundary envelope to both the eastern and western elevations does not impact on the level of required solar access, as per *Clause D6 Access to Sunlight*. Privacy is considered to be acceptable within a residential environment and is addressed in further detail within *Clause D8 Privacy* elsewhere within this report.

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

Comment

The development responds to the steep topography of the site and is consistent with the spatial proportions of surrounding dwellings.

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.

## **B5 Side Boundary Setbacks**

### Description of Non-Compliance

Clause B5 requires a setback of 0.9m to each side boundary line.

The proposed development consists of multiple side setback non-compliances to both the eastern and western side boundary lines. The eastern side boundary line encroachment is a result of the proposed garage, exhibiting a nil setback and a retaining wall to the rear of the property with a 0.1m setback.

The proposed pergola to the first floor of the existing dwelling presents a setback of 0.7m to the east and 0.4m to the west, when measured from the eave. A condition of consent has been recommend to increase the side setback to both side boundaries to a compliant 0.9m

### Merit Consideration

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

- ***To provide opportunities for deep soil landscape areas.***

Comment

Despite the numerical non-compliances, the side setback areas to both the east and west consist of existing and additional soft landscaping as noted on the submitted Landscaping Plan (Urban Escape) and Architectural Plans. In addition, the subject site presents a compliant

landscaped open space area, which has been considered to provide for future vegetation opportunities.

- ***To ensure that development does not become visually dominant.***

Comment

The non-conforming elements of the proposal will be situated within a landscaped setting which will aid in the mitigation of a visually dominant built form.

- ***To ensure that the scale and bulk of buildings is minimised.***

Comment

As mentioned above, the proposal presents an acceptable level of soft landscaping throughout the site, including within the side setback areas. In addition, the proposed garage presents compliance with the building height standard and side building envelope control, reducing the extent of unreasonable bulk and scale.

- ***To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.***

Comment

Although the garage is set on a nil setback, the development aligns with both of the adjoining neighbours existing garages and does not impose on any surrounding private open space areas. A condition of consent has been recommended to delete the balustrade atop of the proposed garage to create a non-trafficable area. Therefore, the garage will not result in an unreasonable level of privacy, amenity and solar access to the adjoining properties.

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

Comment

Refer to *Clause D7 Views* elsewhere within this report for further detail regarding the preservation of views.

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.

## **B7 Front Boundary Setbacks**

### Description of Non-Compliance

Clause B7 Front Boundary Setbacks prescribes a front boundary setback requirement of 6.5m for all built structures, other than driveways and fencing.

The proposed development includes a garage on a 0.4m-0.8m setback from the front boundary line, with a variation of 93.8%.

### Merit consideration:

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

- ***To create a sense of openness.***

Comment

The subject site will maintain a sense of openness through the retention of the existing front lawn area and garden located to the north of the proposed garage. In addition, the existing driveway will be demolished and replaced with soft landscaping to contribute to an open landscaped setting.

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

Comment

The proposed garage is consistent with the visual continuity and existing front setbacks within the immediate vicinity, in particular along the northern side of Headland Road. Due to the steep slope of the subject site, the proposal is considered acceptable in relation to the spatial characteristics of the existing urban environment within the immediate vicinity.

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

Comment

As mentioned above, due to the topography of the land along the northern side of Headland Road many properties exhibit front setback encroachments caused by carparking elements. Hence, the proposed development is in keeping with the existing streetscape character. To aid in the enhancement of visual quality the proposal consists of the retention of open lawn area and provides for additional planting within the front setback area to both the north and west of the garage.

- ***To achieve reasonable view sharing.***

Comment

The front setback encroachment is not considered to result in unacceptable view loss from the surrounding private properties. Refer to *Clause D7 Views* for further detail elsewhere within this report.

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.

## **D7 Views**

Merit Consideration

One (1) submission was received which included concerns regarding potential view loss to the following property:

- 154 Headland Road, North Curl Curl.

Two site inspections were conducted to the affected property, the first on 26 April 2022 to ascertain the extent of views obtained, and the second was to determine the view impact using Council's portable height pole on 21 June 2022. The photos taken from the second site inspection will be referenced within this assessment. Council's height pole (yellow pole) is shown in the images below.

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

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

Comment

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

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

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

### Comment to Principle 1

The affected view obtained by No. 154 Headland Road is achieved primarily in a south-easterly direction over the subject site's (152 Headland Road) side boundary. The views consist of a partial view of North Curl Curl (land and water interface), obstructed by vegetation. Additional views obtained from the property include extensive ocean views to the east and south and a distant view of North Head (land and water interface), which is considered an iconic view to the south.

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

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

### Comment to Principle 2

The views as mentioned above, are primarily obtained from the upper floor, which includes a kitchen, living area and dining room, leading out onto a balcony (outdoor living space) situated to the front of the dwelling house. The affected view of North Curl Curl (land and water interface) is achieved from both a sitting and standing position in all rooms mentioned above, in exception of the kitchen with the view being obtained from a standing position.



***(Photo 1: Views to the south-east of North Curl Curl and extensive ocean views, obtained from the eastern edge of balcony)***



***(Photo 2: Views to the south of North Curl Curl, extensive ocean views and distant view of North Head, obtained from the balcony)***



***(Photo 3: Views to the south-east of North Curl Curl and extensive ocean views, obtained from living room in a standing position)***



***(Photo 4: Views to the south-east of North Curl Curl and extensive ocean views, obtained from living room in a sitting position)***



**(Photo 5: Views to the south-east of North Curl Curl and extensive ocean views, obtained from dining room in a sitting position)**

### 3. Extent of impact

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

#### Comment to Principle 3

The ocean views to the east and south and distant view of North Head (land and water interface), will be wholly retained from both a standing and sitting position from the balcony and the internal rooms mentioned above. The affected partial view of North Curl Curl (land and water interface) will be retained from a standing and sitting position from the balcony (private open space) and dining room. It is notable that these views improve substantially when obtained at the western portion of the front balcony. The affected view of North Curl Curl (land and water interface) will be retained from a standing position from the living room and kitchen, but will be lost from a sitting perspective.

The overall view loss is considered to be **minor**, based on the extent of view corridors and types of views to be impacted from a sitting position (as mentioned in detail above). It is also noted, that the majority of the view corridors will be retained in particular the extensive ocean views to both the south and east and distant view of North Head (land and water interface) to the south.

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

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

##### Comment to Principle 4

The development area that impacts the affected view line is non-compliant with the Building Height Standard of 8.5m, however does exhibit a low-pitched roof form. The proposal has been found to exhibit non-compliance with the Side Boundary Setback and the Side Boundary Envelope built form controls. The side boundary envelope non-compliance is found to be acceptable, achieve consistency with the objectives of the control and have subsequently been supported. Whereas the side boundary setback in relation to the proposed pergola meets the objectives of the control in way of a recommended condition to increase the side setback to 0.9m, when measured from the pergola eave.

In relation to the Side Boundary Envelope, the non-compliance along the western elevation, is primarily caused by the sloping topography towards the northern and eastern portion of the site. As the non-compliance is not considered a significant breach, to provide a fully compliant side boundary envelope would generally result in a similar view loss outcome.

The question of a more skillful design which provides the applicant with a similar development potential and amenity whilst reducing the extent of impact on the views obtained from the affected property, in this case No. 154 Headland Road, North Curl Curl was considered. This included reducing the height of the pergola that was originally proposed at approximately 9.6m to 9.322m and to lower the overall roof pitch and design to respond to the existing roof form of the dwelling house. In addition, as mentioned above a condition of consent has been recommended to increase the side setback of the pergola eave to both side boundary lines to 0.9m, to exhibit compliance with the Clause B5 Side Boundary Setbacks requirements and objectives.

Therefore, the proposed dwelling house is considered reasonable in the circumstances of this application and demonstrates a reasonable sharing of views, particularly considering the views are across a side boundary.

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

##### Comment

The proposed low pitched roof and condition of consent to increase the side setback of the proposed pergola to compliance, will aid in the retention of larger view lines for the adjoining and/or affected property, improving surrounding amenity. As a result, the proposal with the included conditions of consent demonstrates adequate design solutions in an attempt to develop a proposal that incorporates modern and contemporary architecture that is responsive to the natural and urban environment of the vicinity.

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

Comment

No canopy trees are proposed for removal, ensuring vegetation has priority over views.

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.

## D8 Privacy

Merit Consideration

Clause D8 requires building layout to be designed to optimise visual privacy of the proposed development and any existing adjoining dwellings from direct overlooking.

The proposed development includes a pergola to the existing upper floor balcony, no other amendments to the balcony is being proposed that would further impact upon privacy levels than that of what's currently existing.

Privacy has been addressed in relation to the proposed swimming pool by installing a privacy screen/fence to the east, adjacent to the eastern edge of the swimming pool area. It can be considered that the setback from the swimming pool to the western boundary of 6.6m, and the associated decking with a setback of 1.4m provides acceptable separation to the adjoining western neighbour (154 Headland Road). Direct overlooking is mitigated by the retention of the Banksia tree and additional landscaping and feature tree as noted on the Landscape Plan (Urban Escape), located between the development and adjoining western boundary.

The level of privacy are considered to be acceptable within a residential environment, hence no additional conditions have been recommended.

Notwithstanding, the development has still been considered against the underlying Objectives of the Control as follows:

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

Comment

The swimming pool and associated decking provide compliant side setbacks and include design elements such as landscaping and a privacy screen to aid in the protection of visual and acoustic privacy to the surrounding neighbours.

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

Comment

The installation of the above mentioned privacy screen/fence, high quality vegetation and spatial separation between properties, utilises an innovative design solution, addressing visual privacy and improving the surrounding urban environment.

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

Comment

Property and personal security will be maintained for the occupants and visitors by appropriate spatial separation, additional plantings and installation of a privacy screen.

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.

### **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 \$2,924 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$292,360.

### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

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

## RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2021/1755 for Alterations and additions to a dwelling house including a garage, swimming pool and spa on land at Lot 2 DP 1014283, 152 Headland Road, NORTH CURL CURL, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A01 - Site Plan (Rev. C)	30 May 2022	Inlet Design Studio
A04 - Proposed Lower and Ground Floor Plans (Rev. A)	6 July 2021	Inlet Design Studio
A05 - Proposed First Floor Plan	16 June 2021	Inlet Design Studio
A06 - North and East Elevations (Rev. C)	30 May 2022	Inlet Design Studio
A07 - South and West Elevation (Rev. C)	30 May 2022	Inlet Design Studio
A08 - Section A-A (Rev. C)	30 May 2022	Inlet Design Studio
A09 - Section B-B (Rev. A)	30 May 2022	Inlet Design Studio
A10 - Garage Plan and Section (Rev. C)	30 May 2022	Inlet Design Studio
A11 - Garage Elevations (Rev. C)	30 May 2022	Inlet Design Studio
A13 - Pool and Landscape Plan	16 June 2021	Inlet Design Studio
A14 - Pool Elevations & Sections	16 June 2021	Inlet Design Studio

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Concept Stormwater Drainage Plan / Details (Issue B)	23 June 2021	SDS Engineering

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Geotechnical Investigation (Ref: J3604)	3 August 2021	White Geotechnical Group
BASIX Certificate (A400627_07)	16 June 2022	Jacaranda Trading International Pty Ltd.

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:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
LA101 - Landscape Plan (Rev. A)	25 November 2020	Urban Escape

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	28 June 2021	Taleb Eldahoud

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:

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
Ausgrid	Response Ausgrid Referral	9 November 2021

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

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

## 3. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the

- Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
  - (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
    - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
    - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
    - (iii) stating that unauthorised entry to the work site is prohibited.Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
  - (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
    - (i) in the case of work for which a principal contractor is required to be appointed:
      - A. the name and licence number of the principal contractor, and
      - B. the name of the insurer by which the work is insured under Part 6 of that Act,
    - (ii) in the case of work to be done by an owner-builder:
      - A. the name of the owner-builder, and
      - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
  - (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
    - (i) protect and support the adjoining premises from possible damage from the excavation, and
    - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
    - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
    - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

#### 4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 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 7.12 Contributions Plan 2021

A monetary contribution of \$2,923.60 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 2021. The monetary contribution is based on a development cost of \$292,360.41.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

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

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

### 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 Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

### 7. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the proposed buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the kerb in Headland Road.

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

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

### 8. **Amendments to the approved plans**

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

a) The eastern and western pergola eave is to exhibit a side setback of at least 0.9m when measured to the side boundary lines.

b) The balustrade located atop the garage is to be deleted, with the roof of the garage to not be utilised as a trafficable area.

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

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

### 9. **Structural Adequacy and Excavation Work**

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

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and

(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

### 10. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

11. **Compliance with Standards**

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

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority 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**

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

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

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

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 Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website [www.sydneywater.com.au](http://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. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **Protection of Landscape Features, Rock and Sites of Significance**

All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

16. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected including:
- i) all trees and vegetation within the site not indicated for removal on the approved plans, 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), vi) and vii) 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 Certifying Authority,
  - 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) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
  - x) tree pruning from within the site to enable approved works shall not exceed

10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,

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

The Certifying Authority 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.

17. **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.

18. **Survey Certificate**

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

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

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

19. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 4.5 metres wide at the kerb to 5.5 metres wide at the boundary in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to kerb, footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

20. **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 Certifying Authority.

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

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

21. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

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

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

22. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

23. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority 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.

24. **Swimming Pool Requirements**

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

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

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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall

be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

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

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

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

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

**Signed**



**Brittany Harrison, Planner**

The application is determined on 08/08/2022, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**