

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1448
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 25 DP 13457, 106 Prince Alfred Parade NEWPORT NSW 2106 Lot PO 5606, 106 Prince Alfred Parade NEWPORT NSW 2106
Proposed Development:	Alterations and additions to a dwelling house, including a detached double carport and swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Teresa Aruego Easter
Applicant:	Bruce Stafford & Associates Pty Ltd

Application Lodged:	20/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	31/08/2021 to 14/09/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 19.53%
Recommendation:	Approval

Estimated Cost of Works:	\$ 985,000.00
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EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Development Determination Panel (DDP) for consideration of Development Application DA2021/1448 for alterations and additions to a dwelling house, including a detached double carport and swimming pool at 106 Prince Alfred Parade, Newport.

The maximum building height of the proposed development is 10.16m above the existing ground level, which represents a 19.53% variation to the Height of Buildings Development Standard. As the variation to the height standard exceeds 10%, the application is referred to the DDP for determination.

The applicant has demonstrated that compliance with the height standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the 19.53% variation to Clause 4.3 of Pittwater LEP 2014.

When considered on its merits, the bulk and scale of the resulting development is considered to be acceptable in the circumstances of the case, noting that the proposed alterations result in lowering the building by 1.34m and that the side elevations of the dwelling house will be retained. The proposed alterations to the northern (rear) façade result in a terraced style built form that steps down in height with the slope of the land. These factors will ultimately improve the dwelling's presentation to the foreshore area and Pittwater waterway.

The application was exhibited for 14 days and did not receive any submissions.

The proposed redevelopment represents a modernised and improved built form on the site and is compatible and consistent with surrounding residential developments.

The application is recommended for approval subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing dwelling house. Specifically, the works are as follows:

Driveway, Carport and Access

- Remove existing driveway.
- Demolish existing hipped roof carport and construct a new double carport with a flat roof.
- New storage under proposed carport.
- New driveway crossover and access stairs within the road reserve.

Roof

- Demolish existing hipped roof and reconstruct a flat roof.

Level 3

- Internal alterations to provide a modified floor plan, at large consisting of bedrooms and bathrooms.
- New windows.
- Lift shaft.
- New external balcony on rear (north) elevation.
- Retention of side walls.

Level 2

- Internal alterations to provide a modified floor plan, at large consisting of kitchen, living and dining rooms.
- Removal of internal stairs and provide new staircase.
- Lift shaft.
- New windows.

- New partially covered external balcony to provide outdoor dining/living area.
- Retention of side walls.

Level 1

- Internal alterations to provide a modified floor plan, at large consisting of a rumpus room, pool room, gym, guest bedroom and a bathroom, with steam room/sauna.
- The existing walls and roof over the pool are to be removed and the existing swimming pool is to be reconfigured by reducing the size/length of the pool.
- New windows.
- Retention of side walls.

Ancillary Works

- Landscaping and external stairs.
- Reparation works below Mean High Water Mark to jetty stairs, sea wall and boat shed.

Note: Conditions have been included with this consent to remove any works below the Mean High Water Mark (MHWM) and the Boat Shed from the approved scope of works. This is discussed in further detail under the 'Application History' section of this assessment report.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
 Pittwater Local Environmental Plan 2014 - 5.7 Development below mean high water mark
 Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
 Pittwater 21 Development Control Plan - A4.10 Newport Locality
 Pittwater 21 Development Control Plan - B3.7 Estuarine Hazard - Low density residential

Pittwater 21 Development Control Plan - C1.1 Landscaping
 Pittwater 21 Development Control Plan - C1.3 View Sharing
 Pittwater 21 Development Control Plan - C1.23 Eaves
 Pittwater 21 Development Control Plan - D10.1 Character as viewed from a public place
 Pittwater 21 Development Control Plan - D10.4 Building colours and materials
 Pittwater 21 Development Control Plan - D10.7 Front building line (excluding Newport Commercial Centre)
 Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)
 Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)
 Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 25 DP 13457 , 106 Prince Alfred Parade NEWPORT NSW 2106 Lot PO 5606 , 106 Prince Alfred Parade NEWPORT NSW 2106
Detailed Site Description:	The subject site consists of one allotment located on the northern side of Prince Alfred Parade, Newport. The site is regular in shape with a frontage of 13.54m and respective depths of 42.67m and 44.5m along the eastern and western side boundaries. The site has a surveyed area of 581.7sqm. The site is located within the E4 Environmental Living zone pursuant to Pittwater LEP 2014 and accommodates a three storey dwelling house, including a swimming pool within an enclosed area. Existing waterway structures (boatshed and jetty) located below the MHWL serve the site. The site includes canopy trees within the front and rear portions of the site, including species' representative of the endangered Pittwater Spotted Gum Community. The site experiences a fall of approximately 15m that slopes away from the front boundary towards the MHWL, representing an approximate slope of 33.7% across the entire site. The site is environmentally constrained with landslip and estuarine flooding hazards. Description of Surrounding Development The surrounding built environment is characterised by detached low density residential development on sloping sites, typically 2-3 storeys in height. Numerous waterway structures are also prevalent within the locality.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed no recent or relevant applications for the site.

APPLICATION HISTORY

The Development Assessment Planner examined the subject site and the surrounds on 1 October 2021.

Following the preliminary assessment of the application, which included the afore-mentioned site visit, Council wrote to the applicant raising concern of the following aspects of the proposal:

- Estuarine Hazard Management
The alterations to the boat shed are located below the adopted estuarine flood planning level and an Estuarine Risk Management Report was not submitted with this application.
- Works below MHW
The application involved works below the MHW and the required land owners consent from the Department of Crown Lands was not submitted with this application.
- Parking and Access
The applicant had not demonstrated that the driveway and carport satisfied the grades and dimensions outlined within AS2890. Additionally, the access stairs within the road reserve did not demonstrate a minimum 2.5m clearance from the road edge.
- Visual Privacy
The large entertaining deck located off the kitchen, living and dining areas posed unreasonable privacy implications. Council requested that privacy screens be erected along the eastern and western elevations to prevent overlooking into adjacent properties.
- Clause 4.6 Request

Council requested that the applicant's Clause 4.6 written request prepared for the building height non-compliance be amended to correctly reference the maximum building height in relation to an extrapolated ground line across the sloping site. The Clause 4.6 initially referred to the finished floor level on the lower ground floor as the existing ground level, which is an incorrect approach to calculating building height.

Following discussions with the applicant, written correspondence was provided to Council by the applicant requesting that conditions be imposed to delete the works to the boat shed, inclusive of any additional works below the MHWL. This has been discussed with Council's Coast and Catchments Officer who is supportive of the conditions to delete these works.

Furthermore, the applicant submitted amended plans to include two 1.65m high privacy screens along the eastern and western elevations of the level 2 elevated deck, including additional amendments to address Council's concerns that pertained to parking and access. Furthermore, a revised Clause 4.6 written request was submitted to correctly stipulate the maximum building height.

The amended plans constituted a reduced environmental impact. Therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans and a revised Clause 4.6 written request.

Section 4.15 Matters for Consideration	Comments
	<u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this application.
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 31/08/2021 to 14/09/2021 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	No objection if the proposed fireplace that is gas and recommendation of approval no conditions recommendation of refusal if the heater is a solid fuel heater due to lack of information. There does not appears to be details provided with regards to the make and model of the heater and any installation details that will determine if the appropriate Australian Standards will be met. If the applicant wants to install a Solid fuel heater the following information is require with a new Development Application or Section 68 Local Government Act application: 1. Provide evidence that the flue pipe will extend not less than 4.6m above the top of the floor protector. 2. If the flue is 3m or less in horizontal distance from the highest point of the roof, is the top of the flue at least 600mm above the highest point of the roof? 3. If the flue is over 3m metres in horizontal distance from the highest point of the roof, is the height of the flue at least 1000mm above the roof penetration? 4. Provide council evidence that the topography of the site or likely weather patterns or configuration of nearby dwelling/s indicate a potential to cause a smoke nuisance? (Include on site plan) 5. Provide evidence that there are not any significant trees or other environmental or structural factors in the immediate vicinity that may cause a smoke down draught? (Include on site plan) 6. The application must contain site, floor and elevation plans drawn to a scale of 1:100 or 1:200 clearly demonstrating the location of the proposed heater and the proposed flue in relation to the roof line of the dwelling and the closest neighbouring dwelling/building. 7. Provide detailed evidence to Council that the application contains specifications of the appliance to be installed indicating compliance with AS/NZS 2918:2001 and the Building Code of Australia? 8. Provide evidence that the proposed heater will meet the emission control requirements of AS 4013.1999/AS 4013.2014? 9. Provide evidence that the installation will meet the requirements of AS/NZS 2918.2001 Recommendation Refusal.

Internal Referral Body	Comments
	<u>Planner Comment</u> Council has received written correspondence from the applicant confirming that the fire place is a gas device. A condition is included with this consent to ensure the fire place is used as a gas device.
Landscape Officer	The development application is for alterations and additions to the existing house and a new carport at the front and reconfigured front access path and stairs down to the entry to the house, and additional landscape works. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation. • C1.1 Landscaping. • D10 Newport Locality. The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the E4 Environmental Living zone. A Landscape Plan and a Arboricultural Impact Statement are provided with the application. The landscape works include a new path and elevated stairs and landing within the front, around the two gum trees to an entry gate on the front boundary. The existing indoor swimming pool is to have the enclosing walls and roof removed and is to be reduced in size and landscaping is proposed on the low side in front of the pool wall. The existing Spotted Gum trees are retained by the proposed works including two within the front of the property and four at the rear of the property. Tree protection measures and arboricultural recommendations are provided in the Arboricultural Impact Statement, and conditions shall be imposed. The proposal maintains the intent of the E4 zone landscape outcome through the retention of existing canopy trees and additional landscape works. Any new landscape works are to be contained within the property boundaries and no physical encroachments are permitted beyond the property boundaries. Any new proposed works within the road reserve are the subject of a minor encroachment application to Council.
NECC (Bushland and Biodiversity)	Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related controls: • Pittwater LEP cl. 7.6 Biodiversity Protection.

Internal Referral Body	Comments
	• Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community. • Coastal Management SEPP 2018 cl. 13 Development on land within the coastal environment area. The Development Application seeks consent for alterations and additions to an existing dwelling, including a new carport at the front and reconfigured front access path and stairs down to the entry to the house. An Arboricultural Impact Assessment (Jacksons Nature Works, June 2021) was submitted with the application which recommends the retention and protection of all native canopy trees within the site. As the proposal does not require the removal of native prescribed trees or vegetation, nor will it impact on nearby biodiversity values, Council's Biodiversity referrals team are satisfied that the development complies with the relevant biodiversity controls listed above.
NECC (Coast and Catchments)	The development proposal is for a new carport, alterations and additions to the existing dwelling and indoor swimming pool, alterations to the existing boatshed as well as associated landscaping at 106 Prince Alfred Parade, Newport. A preliminary assessment of the application has been made in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against the coastal relevant requirements of Pittwater LEP 2014 and Pittwater 21 DCP. The development proposal, however, has not provided sufficient information to enable the assessment to be completed. Pittwater LEP 2014 and Pittwater 21 DCP <u>Estuarine Hazard Management</u> The subject property has been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.68m AHD applies at the subject site. While the proposed new carport and alterations and additions to the dwelling and swimming pool are above the adopted EPL, the existing floor level for the boat shed (RL 2.22m AHD) is below the EPL. Proposed alterations to the boat shed trigger the provisions of B3.7 Estuarine Hazard controls in P21 DCP. Variations to the B3.7 Controls provides that consideration may be given on a merit basis to

Internal Referral Body	Comments
	a floor level of a boat shed at a level lower than the Estuarine Planning Level where it can be demonstrated through an Estuarine Risk Management Report that the proposed development of the boat shed is structurally designed to withstand periodic wave action and tidal inundation up to the Estuarine Planning Level. An Estuarine Risk Management Report must address the objectives and relevant requirements of the Estuarine Risk Management Policy for Development in Pittwater as well as those of the CM Act and CM SEPP. The report must be prepared by a specialist coastal engineer who is a registered professional engineer with chartered professional status (CP Eng) and with coastal engineering as a core competency and who has an appropriate level of professional indemnity insurance. <u>Development Seaward of Mean High Water Mark</u> Works located on Crown land below the Mean High Water Mark are proposed as a part of the subject DA including to repair/make good the existing seawall, repair/make good the existing stair to the foreshore and repair/make good the front of the boat shed. The nature and extent of the proposed repair/make good works have not been defined in the submitted plans and needs to be clarified and elaborated. Landowner's consent to lodge a DA will need to be provided from the Department of Planning, Industry and Environment – Crown Lands for the proposed work on Crown foreshore and waterway below the MHWL. The relevant requirements of Section D15.12: Development seaward of mean high water mark in Pittwater 21 DCP will also apply to the proposed development. The DA will be further assessed on receipt of the requested additional information including an Estuarine Risk Management Report. <u>Planning Comment</u> Conditions have been imposed to delete the works to the boat shed, inclusive of works below the MHWL, from the approved scope of works. Amended plans must be submitted to the Certifying Authority prior to the issue of the Construction Certificate to demonstrate compliance with these conditions.
NECC (Development Engineering)	Updated response (26/11/2021) The amended plans have been reviewed. A minor encroachment application shall be made for the landscape works and elevated walkway within the road reserve as conditioned in accordance with Council's Encroachment/Construction and Road Reserve Lease Policy. No objections to approval subject to conditions as recommended.

Internal Referral Body	Comments
	Original response (29/10/2021) The proposal is for alterations and additions to the existing dwelling including a new driveway and access stairs located on the road reserve. <u>Access</u> Insufficient information has been provided with regard to the proposed access driveway. the following additional information is required for assessment: • The current plans shows no dimension for the proposed driveway or carport. The applicant shall provide plans showing dimensions for the proposed driveway at both the kerb and boundary as well as the carport. • The Applicant shall provide engineering long-sections at both edges of the proposed access driveway to the proposed carport and demonstrate compliance with AS2890. The long sections are to include distances, existing levels and proposed levels. The driveway shall incorporate one of Council's standard vehicle crossing profiles. Additionally the Road Asset team have requested clarification on a number of issues which must be addressed in the amended plans. The plans must address the following as per Road Asset Comments: • <i>The proposed elevated walkway does not provide sufficient clearance from the road carriageway for safety requirements. A 2.5m road shoulder clearance from edge of carriageway to be maintained clear of obstructions.</i> • <i>Also of concern is the existing stairway and apparent drop from road level without any physical barrier. It is recommended that consideration will need to be given to resolving this safety concern.</i> • <i>The elevated walkway within the property boundary must not rely on support from within the public road reserve, that is, foundations are to be located within the property. The section of elevated walkway on the public road reserve is not to provide support for structures/walkway within the property.</i>
Parks, reserves, beaches, foreshore	The development application is for alterations and additions to the existing house and a new carport at the front and reconfigured front access path and stairs down to the entry to the house, and additional landscape works. The site adjoins Pittwater foreshore located downslope of the property, and all works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site

Internal Referral Body	Comments
	boundaries and prevented from entering the Pittwater foreshore, and is subject to conditions of consent.
Road Reserve	Updated response (25/11/21) No objection to amended plans. Development Engineering Team to require the submission of a consolidated s.138 Road Act Application and Engineering Design plans addressing the above. Original response (26/09/2021) There is limited impact on existing road infrastructure assets however the proposed pedestrian walkway encroaches excessively into the road shoulder area. Also of concern is the existing stairway and apparent drop from road level without any physical barrier. It is recommended that consideration will need to be given to resolving this safety concern The proposed elevated walkway does not provide sufficient clearance from the road carriageway and will need to be relocated to maintain clear zone safety requirements. A 2.5m road shoulder clearance from edge of carriageway to be maintained clear of obstructions. The elevated walkway within the property boundary must not rely on support from within the public road reserve, that is, foundations are to be located within the property. The section of elevated walkway on the public road reserve is not to provide support for structures/walkway within the property. Details will need to be submitted as part of s.138 Road Act application for structures and works within the road reserve. Landscaping proposal to be subject to an encroachment application or included as part of s138 Road Act application. Plant selections will need to comply with Former Pittwater Council Streetscape Management Guidelines Development Engineering Team to require the submission of a s138 Road Act Application for the redesigned elevated walkway in conjunction with suspended driveway and any other works within the public road reserve.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.
Aboriginal Heritage Office	No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.

External Referral Body	Comments
	Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was lodged with this application (see BASIX Certificate No. A416550, dated 6 July 2021). A condition has been included with this consent to ensure compliance with the aforementioned BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP 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 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.

SEPP (Coastal Management) 2018

The site is identified within the Coastal Environment Area and Coastal Use Area pursuant to SEPP (Coastal Management) 2018. Accordingly, the proposal is considered against Clause 13, 14 and 15 of the Policy as follows:

13 Development on land within the coastal environment area

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

- will be managed to minimise that impact, or*
- (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The proposed development, as amended via conditions, does not include works below the MHWL. Furthermore, the proposal will not result in the removal of native canopy trees on the site. In this regard, the proposal is unlikely to have an adverse impact upon native flora and fauna within the coastal zone, including marine vegetation. Sediment and erosion control measures have been conditioned which will reduce the likelihood of siltation of the Pittwater waterway.

The existing access arrangements to the foreshore from the site will be largely maintained, whilst conditions have been included with this consent to exclude the works below the MHWL from the approved development. Therefore, the proposed development will not preclude access to or along the foreshore area, nor will the development impact the use of the surf zone.

The application has been referred to the Aboriginal Heritage Office, who have reviewed the application and noted that the site is subject to previous disturbance and thus, the works are unlikely to impact upon Aboriginal cultural heritage, practices or places.

For the reasons outlined above, it is concluded that the development is designed, sited and will be managed to avoid an adverse impact referred to in Clause 13.

14 Development on land within the coastal use area

(1)

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

Comment:

As noted above, the proposal will not impact Aboriginal Cultural Heritage, practices or places or preclude access to or along the foreshore.

Noting the north-south orientation of the allotment and that the foreshore area is located to the north

(rear) of the site, the proposal will not result in overshadowing of the foreshore area. Furthermore, the works are appropriately scaled and sited to prevent wind funnelling or significant view impacts to or from public places.

The site is not located within a heritage conservation area or within the vicinity of items identified with local or state heritage significance. Therefore, the proposal will not impact upon cultural and built environmental heritage

The Development Assessment Planner has taken into account the surrounding coastal and built and environment and concluded that the proposed development is appropriately scaled and sited, such it will maintain an appropriate visual relationship with the surrounding environment.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

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

Comment:

The proposed development has been adequately designed to respond to the environmental constraints of the site, such that it can be stated that the proposed development is not likely to cause increased risk of coastal hazards within the locality.

Conclusion

Based off the above assessment, it is concluded that the proposed development demonstrates consistency with the relevant matters prescribed within the SEPP (Coastal Management) 2018.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.16m	19.53%	No

Note: The maximum building height is taken from RL20.11.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	No
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

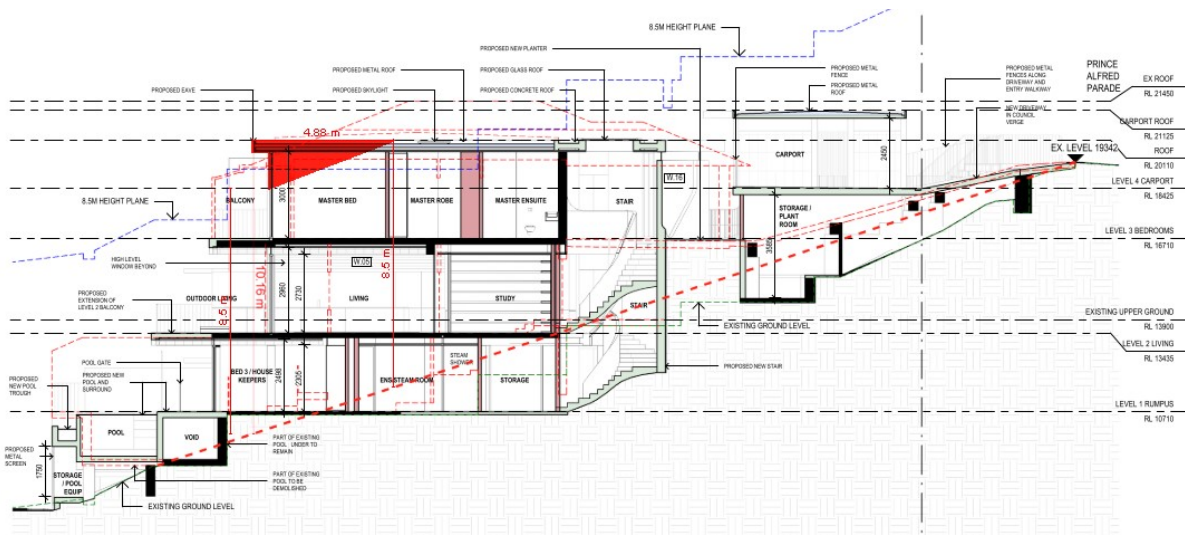
Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	10.16m
Percentage variation to requirement:	19.53%

The site is subject to an 8.5m maximum building height under the requirements of Clause 4.3 of Pittwater LEP 2014. The proposed development contains a maximum building height of 10.16m, which represents a 19.53% variation from the Development Standard. The extent of the non-compliance occurs for a horizontal length of 4.88m. The exemption provisions detailed within Clause 2D of Pittwater LEP 2014 are not applicable as the maximum building height is over 10m.

It is important to note that the hipped roofline of the existing dwelling house has a maximum building height of 9.97m and is sited at RL21.45. Whilst the new flat roofline is situated 1.34m below the ridge of the existing roofline, being sited at RL20.11, the maximum building height relative to the existing ground level is increased by 190mm.

Figure 1 below depicts the areas of the proposal that protrude above the 8.5m height plane.

Figure 1: section plan highlighting the proposed building height non-compliance



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) 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 applicant's written request argues, in part:

"The environmental planning grounds that are unique to the site and the proposal is the actual reduction in building height and scale.

Whilst the proposal involves a breach of the height of buildings standard on the north end of the building, the height of the building and the roof will actually be lower in height compared to the existing pitched tile roof that is to be replaced with a new low profile, low pitched metal roof.

The house will be lower in height compared to the existing higher pitched roof and will be reduced in bulk and scale by the new low profile roof and removal of the enclosure of the existing swimming pool as well.

In this regard, a variation to the height of buildings standard would be reasonable and appropriate because the proposal alterations do not involve any adverse visual impact when viewed from the bay or from adjoining properties, and the amenity of the adjoining properties will also be maintained to an acceptable degree.

The proposal will be consistent with the aims and objectives of the Pittwater LEP, the objectives of the height of buildings standard and the objectives of the E4 Environmental Living Zone.

The absence or lack of environmental harm in this case, with specific reference to the adjoining properties and more generally the locality, is also an appropriate environmental planning ground to justify contravening the development standard.

The contention that an environmental planning ground could include establishing a lack of environmental harm was supported in a recent case in the Land and Environment Court of NSW in Initial Action v Woollahra Council (2018) NSWLEC 118.

This was also an appeal against a Commissioner's decision on questions of law. This case related to the Commissioner's refusal to grant development consent for a residential flat building that contravened the height of buildings development standard of the Woollahra LEP 2014, and the Commissioner was not satisfied that contravention of the development standard was justified in the Clause 4.6 exception to a development standard.

In his Principal judgment Preston CJ made a similar finding as he did in Randwick City Council v Micaul Holdings Pty Ltd at [34], in relation to consistency of a development with the objectives of a development standard and consideration that a lack of adverse amenity impacts on adjoining properties is a sufficient ground justifying a development contravening the development standard.

The underlying objectives of the height of buildings standard is to minimise adverse amenity impacts specifically in relation to solar access and views.

In relation to the subject proposal, there will be no adverse impacts on the amenity of the surrounding properties or the locality by virtue of the breach of the height of buildings standard on the north end of the roof. The proposal is also consistent with the objectives of the E4 Environmental Living Zone, as outlined in Part 4 of this statement.

The absence of any adverse amenity impacts from the elements of the proposed additions to the house that breach the height of building standard are also environmental planning grounds that justify the departure from the height of buildings standard.

In terms of the Objects of the EPA&Act, the proposal will be consistent with the objectives of the Act, particularly in relation to ecologically sustainable development, the orderly and economic use and development of the land, sustainable management of built and cultural heritage and good design and amenity of the built environment.

The proposal will be consistent with the objectives of the EP&AAAct and the aims and objectives of the LEP, the objectives of the height of buildings standard and the objectives of the E4 Environmental Living Zone.

For these reasons, there are sufficient environmental planning grounds as outlined that are particular to the circumstances of the site and the proposed alterations and additions to the existing house, to justify the departure from the height of buildings standard".

Planner Comment:

Council's Development Assessment Planner generally concurs with the applicant's justification.

It is agreed that that despite the height breach the roofline of the proposed development will be lowered by 1.34m, which assists in reducing the bulk and scale of the existing development on the site. This is achieved through employing a flat roof profile, whereas the existing dwelling house includes a hipped roofline.

It is accepted that the building height non-compliance will not adversely impact upon the amenity of adjoining properties, specifically with regards to solar access or views. Given the north-south orientation of the allotments, sloping topography that falls towards the north and lowering of the roofline, adjacent properties will retain adequate direct sunlight to private open space and north facing living room windows on June 21. Furthermore, the eastern and western adjacent sites (No's 108 and 104 respectively) will maintain the primary view lines over the rear (north) boundaries towards the Pittwater waterway, whilst any views from dwelling houses located to the south (upslope) will be unaffected by the height breach given the 1.34m reduction in building height (potential view impacts resulting from

carport are addressed under the section of this report relating to Clause C1.3 of the Pittwater 21 DCP).

It is also agreed that the proposed development will not result in any unreasonable visual impacts, notwithstanding the height breach. The proposed development incorporates façade articulation on all levels of the rear elevation and employs a terraced style built form that steps down in height with the slope of the land. These design treatments, coupled with the 1.34m reduction in roof height, assist in visually reducing the bulk and scale of the built form when viewed from the foreshore area and Pittwater waterway.

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 Clauses 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 E4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed development results in a 1.34m reduction in building height and does not increase the number of storeys of the existing dwelling house. The scale of the resulting development will remain consistent to that of adjacent and nearby dwellings, noting that Prince Alfred Parade accommodates numerous three storey dwelling houses. Furthermore, the proposed development is consistent with the intent of the Newport Desired Future Locality Statement. A detailed

discussion of this matter is provided in the section of this report relating to Clause A4.10 of the Pittwater 21 DCP.

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

Comment:

As noted above, the resulting dwelling house will be consistent with the height and scale of nearby development along Prince Alfred Parade.

c) to minimise any overshadowing of neighbouring properties,

Comment:

Adjacent private open space and living room spaces are sited towards the rear of dwelling houses and are orientated towards the north to allow for the enjoyment of water views of the Pittwater waterway. Additionally, adjacent dwelling houses contain numerous glazing on northern elevations to ensure that water views are enjoyed from living rooms and various other internal areas within the dwelling houses. Given the north-south orientation of the allotments and the lowering of the roofline, the proposed development does not result in overshadowing of adjacent private open space or north facing living room windows. It is further noted that the proposal complies with the Pittwater 21 DCP solar access provision.

d) to allow for the reasonable sharing of views,

Comment:

The eastern and western adjacent sites (No's 108 and 104 respectively) will maintain the primary view lines over the rear (north) boundaries towards the Pittwater waterway, whilst any views from dwelling houses located to the south (upslope) will be unaffected by the height breach given the 1.34m reduction in building height.

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

Comment:

Whilst the existing side walls are retained, the proposed development incorporates changes to the northern (rear) façade to include terraced styled balconies, which allows the dwelling to have a 'stepped' appearance that descends in height with the slope of the land. In this regard, it is considered that the proposal is appropriately designed to respond to the natural topography that slopes from south to north.

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

Comment:

The site does not contain a heritage item, is not located within a heritage conservation area and is not located in close proximity to heritage items. Therefore, the proposal will not have an adverse impact upon environmental and built heritage. Furthermore, the proposal does not require the removal of significant canopy trees.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

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

Comment:

The proposed development does not involve significant alterations to the site topography, with a large extent of any earthworks generally confined to the building footprint. Additionally, the existing Spotted Gum canopy trees on the site will be retained, whilst the proposal will result in a net increase of soft landscaping on the site. It is considered that proposed alterations and additions are appropriately sited and scaled, such that the works will not unreasonably detract from the visual qualities of the locality. Council's Landscape and Biodiversity Officers have reviewed the proposal and considered the development to be acceptable. Overall, the development is considered to have an acceptable impact upon the ecological, scientific or aesthetic values of the area.

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

Comment:

As demonstrated above, the proposed development does not have an adverse effect on the ecological, scientific or aesthetic values listed above.

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

Comment:

The building height steps down with the slope of the land, which visually reduces the built form and sensitively responds to the natural topography. Furthermore, the proposal results in an increased of soft landscaping on the site and retains the existing canopy trees on the site. The resulting development, which includes a 1.34m reduction in building height, is considered to be of a low density and scale integrated into the landform and landscape.

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

Comment:

The proposed development does not have an adverse impact upon riparian and foreshore vegetation or wildlife corridors.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of Clause 4.3 of Pittwater LEP 2014 and the objectives of the E4 Environmental Living zone.

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

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

Planning Circular dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of buildings Development Standard associated with a Class 1 or 10 building.

5.7 Development below mean high water mark

The proposed development encompasses works below the MHWM. These works are as follows:

- Reparation works below Mean High Water Mark to Jetty stairs, sea wall and boat shed.

The proposed works below the MHWM require a letter of consent from Transport for NSW, Crown Lands and the Department of Fisheries. This information has not been submitted with the Development Application. Accordingly, a suitable condition has been included with this consent requiring these works to be removed from the approved plans. Amended plans demonstrating compliance must be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

7.8 Limited development on foreshore area

The site contains a foreshore building line (FBL) that traverses below the existing building footprint. The FBL intersects the eastern boundary 29.2m northward of the front boundary and intersects the western boundary 30.6m northward of the front boundary.

Clause 7.8 of Pittwater LEP 2014 permits the following types of development below the FBL:

(2) Development consent must not be granted for development on land in the foreshore area except for the following purposes—

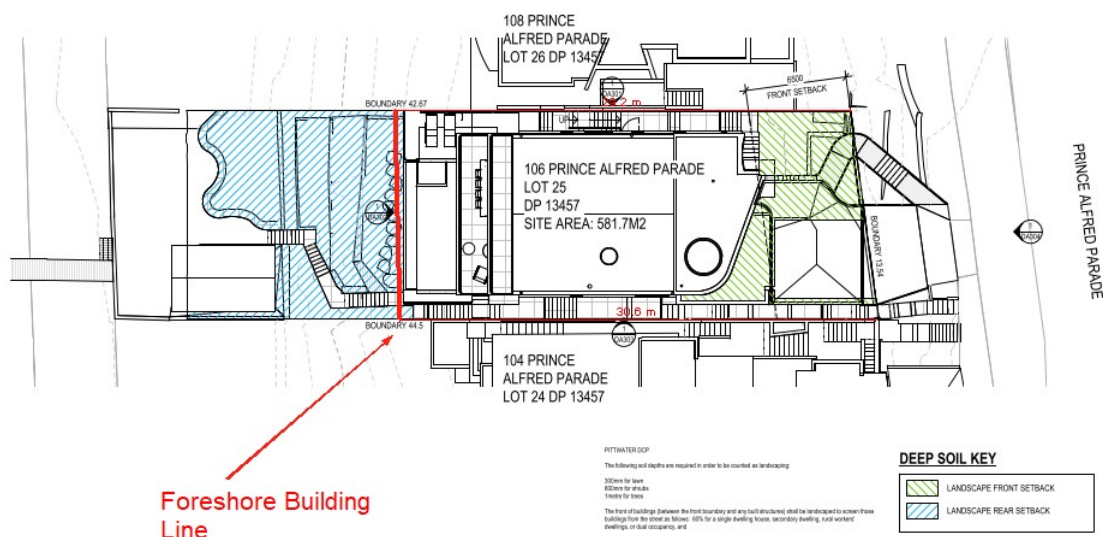
(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,

(b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

Comment:

An assessment of the application has confirmed that the proposed works to the dwelling house footprint do not encroach below the FBL. Figure 2 below has extrapolated the FBL on the applicant's site plan, which confirms compliance with this control.

Figure 2: Site plan with FBL



It is noted that the existing access stairs located below the FBL will be retained. Nevertheless, these works are permitted below the FBL as they constitute waterway access stairs.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	nil setback (carport) 6.8m (dwelling)	100% (carport)	Yes - variation applies - see discussion
Rear building line	Foreshore Building Line (FBL)	dwelling footprint above FBL	-	Yes
Side building line	2.5m (east)	1.5m (dwelling) - as existing	40%	No - however no further non-compliance
	1m (west)	0.95m (carport) 0.94m - 1.55m (dwelling) - as existing	5% (carport)	No (carport) No further non-compliance for dwelling
Building envelope	Merit Assessment as >30% slope (east)	Outside standard envelope	up to 113%	Acceptable on Merit
	Merit Assessment as >30% slope (west)	Outside standard envelope	up to 105.54%	Acceptable on Merit
Landscaped area	60% (349.02sqm)	33.28% (193.6sqm)	44.53%	No - however existing non-compliance reduced

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	No	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	No	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	No	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	No	Yes
D10.4 Building colours and materials	No	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.14 Fences - General	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.10 Newport Locality

Clause A4.10 of the Pittwater 21 DCP provides guidance of the form and scale of development anticipated for the Newport locality. The Desired Character Statement reads as follows:

"The Newport locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community".

"Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport".

"Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards".

"A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors".

"Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved".

"Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities".

"Newport's coastal setting is what contributes most to the distinctive character of the commercial centre. Responsive, energy efficient buildings will support and enhance this relaxed, beachfront character and its outdoor lifestyle, contributing to a unique sense of place. Contemporary design solutions within the commercial centre will respond to Newport's climate and setting, including providing shade and shelter to streets and entries, generous private outdoor spaces, openings that capture ocean breezes, and shade elements".

The proposed development involves alterations and additions to an existing three storey dwelling house. As outlined above, the Newport Desired Future Character Statement calls for two storey development within low density residential areas.

Whilst the Locality Statement calls for two storey development, the proposed development is considered to achieve the overall intention of the desired future character statement for the following

reasons:

- The proposed development does not increase the number of storeys to the existing dwelling and results in a 1.34m reduction in height;
- When viewed from the street the dwelling will continue to present as a single storey structure;
- The development steps down in height with the slope of the land to integrate with the landform and landscape;
- The proposed development results in a net increase of soft landscaping on the site and retains all existing canopy trees on the site;
- The proposal minimises site disturbance and has been designed to respond to the geotechnical hazards on the site;
- The western (rear) elevation incorporates numerous articulated elements, which will improve the dwelling's presentation to the foreshore and Pittwater waterway;
- The roofline of the resulting development remains well below the established tree canopy; and
- The dwelling will remain supported by adequate infrastructure.

B3.7 Estuarine Hazard - Low density residential

Council's Coast and Catchments Officer has raised concern of the works to the boat shed, noting that the alterations to the boat shed are located below the adopted estuarine flood planning level and an Estuarine Risk Management Report was not submitted with this application. Following discussions with the applicant, written correspondence was provided to Council by the applicant requesting that conditions be imposed to delete the works to the boat shed, inclusive of any additional works below the MHWM. This has been discussed with Council's Coast and Catchments Officer who is supportive of the conditions to delete these works.

Based on the above, the proposal, as amended via conditions, will be consistent with the requirements and outcomes of this control.

C1.1 Landscaping

The proposal is technically non-compliant with the landscaping requirements of this control, which require at least 60% of the front setback area to be landscaped. Only 44.81% of the front setback area is landscaped.

Despite this, the proposed development results in an increase of soft landscaping throughout the entire site. Additionally, the proposed development retains all existing canopy trees on the site.

Given the location of the existing dwelling and the topography of the site, there is limited opportunity for additional soft landscaping within the front setback. Given the slope of the land, falling away from the street, the bulk and scale of the proposal will continue appear as one storey and will not dominate the streetscape.

The application has been reviewed by Council's Landscape Officer and Bushland & Biodiversity Officer who raised no objection to the development, subject to conditions.

Under these circumstances, the non-compliance is supported in this instance.

C1.3 View Sharing

View Loss from the Public Domain

Consideration has been given to the potential for view loss from the public domain, noting that an existing view line towards the Pittwater Waterway and western foreshore is obtained from the Prince Alfred Parade roadway and road reserve.

In determining the extent of potential view loss from the public domain, the planning principles outlined within the NSW Land and Environment Court Case of *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046 are applied to the proposal.

1. The Nature and Scope of Existing Views

The first step of this stage is to identify the nature and scope of the existing views from the public domain. This identification should encompass (but is not limited to):

- *the nature and extent of any existing obstruction of the view;*
- *relevant compositional elements of the view (such as is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);*
- *what might not be in the view - such as the absence of human structures in the outlook across a natural area (such as the view from Kanangra Walls);*
- *is the change permanent or temporary; or*
- *what might be the curtilages of important elements within the view.*

Comment:

The existing views from the public domain, in this case being the Prince Alfred Parade roadway, consist of the Pittwater waterway and western foreshore land-water interface. The water views are partially obstructed by the existing dwelling house and canopy trees on the subject site, including canopy cover on adjacent properties. The existing dwelling house is a permanent obstruction, whilst the obstruction caused by the canopy cover is not permanent. The view in question is depicted in Figure 3 below.

Figure 3: *public domain views from the roadway*



2. Location of View Interruptions

The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed.

Comment:

The affected view is available from the Prince Alfred Parade roadway and road reserve.

3. Extent of Obstructions

The third step is to identify the extent of the obstruction at each relevant location.

Comment:

The location where the views are obtained are limited to the roadway and road reserve. The water views can be obtained from a standing position from the road reserve, whilst the view could also be enjoyed from a sitting position within a car whilst travelling along Prince Alfred Parade.

As the roofline to the dwelling house is lowered by 1.34m, the view loss from the public domain would not arise from the alterations to the dwelling footprint. However the application also proposed a new carport on an elevated parking platform setback 0.95m from the front boundary. The roofline of the proposed carport is sited at RL21.125, which sits 325mm below the ridge line of the existing dwelling house and approximately 1.82m above the road edge on the northern side of Prince Alfred Parade. In this regard, the flat roof profile of the carport will obstruct the bushland on the western foreshore (not land water interface), whilst the semi enclosed masonry walls to the carport would obstruct areas of the Pittwater waterway when in standing and seated positions. It is noted that only the western masonry

wall within the carport creates the view impact. The rear elevation of the carport is largely open (excluding transparent balustrading) and will not significantly obstruct existing view lines towards the Pittwater waterway and western foreshore from standing positions within the road reserve and seated positions within a traveling car.

4. Intensity of the use of the relevant Public Space

The fourth step is to identify the intensity of public use of those locations where that enjoyment will be obscured, in whole or in part, by the proposed private development.

Comment:

Prince Alfred Parade is a long windy road that traverses along the eastern foreshore of the Pittwater area, however is not classified as an arterial road. Prince Alfred Parade receives moderate volumes of vehicular movement.

However, the area of Prince Alfred Parade that accommodates the subject site is devoid of a formal level/paved pedestrian footpath within the road reserve. As such, the area is not particularly conducive for pedestrians to walk and enjoy the view.

5. Documentation of the View

The final step to be identified is whether or not there is any document that identifies the importance of the view to be assessed. This will encompass specific acknowledgment of the importance of a view (for example, by international, national, state or local heritage recognition) or where the relevant planning regime promotes or specifically requires the retention or protection of public domain views.

Comment:

Prince Alfred Parade is not identified on Council's scenic walkways list. Additionally, the view corridor does not capture any items or areas of local, state, national or international heritage significance. However, the view is highly regarded as it encapsulates the Pittwater waterway.

Clause C1.3 of the Pittwater 21 DCP aims to preserve views from roads and states as follows: *"Where a view may be obstructed, built structures within the setback areas are to maximise visual access through the structure e.g. by the provision of an open structure or transparent building materials"*. As stated above, the sides of the carport are semi enclosed with 2m high masonry walls, which partially obstruct the water views of Pittwater.

Given the existing views from the road reserve hold high value (water views), there is a need to ensure that the view is adequately retained. As the view impact is created by a front setback non-compliance and exacerbated by the 2m high masonry wall on the western elevation, it is considered appropriate to seek an alternative design treatment to the carport that would maximise visual access through the structure. As such, a condition has been included with this consent requiring the western wall of the carport to consist of transparent materials (i.e. transparent glazing). It is considered that this amended carport would allow for further view retention from the public domain and satisfy the requirements and objectives of this control.

View Loss from Private Property

The proposed alterations and additions to the dwelling house will not impact upon existing primary views from the eastern and western adjacent sites (No's 108 and 104 respectively), noting the views of the Pittwater waterway and western foreshore are obtained over the rear (north) boundaries.

When examining the potential view impacts from southern (upslope) properties, an examination of Council's records has revealed that primary living spaces on upslope properties are sited at levels of RL25 or higher and orientated towards the north to maximise the water views. Noting that the roofline of the proposed carport is sited at RL21.125 and that the roofline of the dwelling house is sited at RL20.11, it is reasonable to conclude that existing views of the Pittwater waterway will be maintained from the upslope properties when in standing and seated positions. It is important to note that the Development Assessment Planner has not undertaken site visits at the upslope properties for the purpose of view impact analysis as no objections to the development were received.

Conclusion for View Loss from Public and Private Property

Having regard to the above assessment, it is concluded that the proposal will achieve the requirements and outcomes of this control and satisfy the planning principles outlined within the NSW Land and Environment Court Case of *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor [2013] NSWLEC 1046*, subject to the recommended condition outline above.

C1.23 Eaves

The control requires dwellings to incorporate 450mm wide eaves on all elevations. The proposed dwelling does not incorporate 450mm wide eaves on all elevations, which fails to meet this requirement.

Despite this, the proposal is supported by a valid BASIX Certificate to demonstrate suitable energy efficiency. Additionally, the proposed development allows for compliant solar access to the subject site and adjacent properties, whilst also providing covered outdoor private open space to ensure appropriate shading.

For the reasons outlined above, it is concluded that the outcomes of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

D10.1 Character as viewed from a public place

Clause D10.1 of the Pittwater 21 DCP stipulates that parking structures should be set beyond the prescribed building setback line and should not be of a width greater than 50% of the width of the site. The proposed carport is within the front setback area but measures lesser than half the width of the site (6.39m of 13.54m).

The proximity of the carport to the front boundary line is assessed below in this report under Clause D10.7 and a secondary assessment on this clause (which in essence requires the same thing) is not required.

D10.4 Building colours and materials

The proposal includes stone cladding and light coloured cement rendered walls, in addition to light coloured roofing. The stone cladding harmonises with the natural bushland setting, however the light coloured walls and roofing is inconsistent with the prescribed requirements within this control.

It is noted that the existing colour scheme of the dwelling house does not meet the prescribed dark and earthy tones required by this control and it would be unreasonable to request the entire dwelling to be revised to consist of dark and earthy tones. It is further noted that nearby dwellings within the visual catchment of the site (when standing at the foreshore area) do not contain dark and earthy tones. Accordingly, a variation for the external walls are supported.

However, in order to minimise solar reflectivity a condition has been included with this consent requiring the roofing to consist of medium to dark colours.

Subject to compliance with the conditions of consent, the proposal will achieve the outcomes of this control.

D10.7 Front building line (excluding Newport Commercial Centre)

The control requires development to be setback in line with an established building line or at least 6.5m where there is no established building line. In the absence of an established building line that is greater than 6.5m, the 6.5m front setback is applied for this assessment.

The proposed carport presents a nil front setback, which does not meet the prescribed requirement. It is noted that the works to the dwelling house are setback 6.8m from the front boundary, which meets the numeric requirement.

Notwithstanding the variation to the carport, the control contains an exemption provision which reads as follows: *"Where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable"*.

The proposed development meets the exemption provision as the dwelling house is setback over 6.5m from the front boundary and site is constrained with a 33.7% slope that falls away from the street to the MHWM.

When considering the location of the carport on its merits, it is considered that the outcomes of the control are achieved. A detailed assessment against the outcomes is provided below as follows:

- *Achieve the desired future character of the Locality.*

Comment:

As discussed within the section of this report relating to Clause A4.10 of the Pittwater 21 DCP, the proposed development is considered to align with the intent of the Newport Locality Desired Future Character Statement.

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

Comment:

As discussed within the section of this report relating to Clause C1.3 of the Pittwater 21 DCP, it is concluded that the positioning of the carport will not unreasonably impeded view lines towards the Pittwater waterway from the public domain (road reserve), subject to a condition requiring the western wall of the carport to be amended to consist of transparent materials.

- *The amenity of residential development adjoining a main road is maintained.*

Comment:

The residential development does not adjoin a main road. Therefore, this outcome is not relevant.

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

Comment:

The two existing canopy trees within the front setback will be retained, which will contribute to the natural amenity of the streetscape and soften the built form. Additional landscape treatment within the front setback area is also proposed.

- *Vehicle manoeuvring in a forward direction is facilitated.*

Comment:

The proposed carport does not allow vehicles to enter and exit the site in a forward manner. Nevertheless, vehicular access will be improved when compared to the current arrangement as the existing garage is accessed via a steep driveway. The proposed elevated carport is accessed via a suspended crossover with compliant grades. Council's Development Engineer's have reviewed the proposal with respect to off-street parking and vehicular access and raised no objections, subject to conditions.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

Comment:

The roofline of the carport is sited well below the established tree canopy.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment:

The proposed carport, as amended via conditions, will present with open front, rear and western sides. Furthermore, the height of the carport is relatively modest. Therefore, the carport will not present with excessive bulk when viewed from the public domain.

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

Comment:

The carport responds to the spatial characteristics of the existing urban environment, noting that numerous surrounding properties within the visual catchment of the site contain parking structures within the front setback area.

Conclusion

As demonstrated above, the proposal satisfies the exemption provision within this control and meets the applicable outcomes of the control.

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

Description of non-compliance

The control requires development to be setback at least 2.5m from one side boundary and 1m from the opposing side boundary. For the purpose of this assessment, the 2.5m side building line is applied to the eastern boundary and the 1m side building line to the western boundary.

The proposal maintains the existing side walls of the dwelling house, which are setback 1.5m from the eastern side boundary and between 0.95m - 1.55m from the western side boundary.

Furthermore, the carport is setback 0.95m from the western side boundary, which does not meet the numeric requirement.

Merit Consideration

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

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

Comment:

As discussed within the section of this report relating to Clause A4.10 of the Pittwater 21 DCP, the proposed development is considered to align with the intent of the Newport Locality Desired Future Character Statement.

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

Comment:

Whilst the existing walls will be retained, which do not meet the numeric side setback requirements, the proposed alterations will visually reduce the bulk and scale of the built form as perceived from the foreshore area and Pittwater waterway. This is achieved through reducing the building by 1.34m in height and through employing numerous articulated elements on the rear (north) façade. The resulting development will present as a terraced style built form that steps down in height with the slope of the land. For these reasons, it is considered that the bulk and scale of the dwelling house is appropriately minimised given the circumstances of the case, which involves the retention of existing side walls.

In regards to the carport, the amended design will present with open front, rear and western sides. The bulk and scale of the carport is not considered to be excessive.

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

Comment:

As discussed earlier within this report, the proposal will allow equitable preservation of views and vistas to and from public and private places, subject to compliance with the conditions of consent.

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

Comment:

As noted above, reasonable view sharing will be achieved, subject to conditions.

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

Comment:

The proposal has been designed to ensure that a reasonable level of visual privacy is maintained between properties. This is achieved through the provision of fixed privacy screening on the upper floor side elevation windows, inclusive of the side elevations of the level 2 terrace located off the living, kitchen and dining rooms. Furthermore, lower level windows include high window sills on the side elevations, whilst larger glazed elements are orientated towards the rear (north). In respect to the carport, it is noted that the minor side setback non-compliance will not impact upon the acoustical amenity of adjacent properties due to the separation from habitable spaces. Furthermore, any overlooking that may occur from the carport is not unreasonable as the area is not a highly trafficable area.

Furthermore, noting the north-south orientation of the allotments, sloping topography that falls towards the north and lowering of the roofline, adjacent properties will retain adequate direct sunlight to private open space and north facing living room windows on June 21.

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

Comment:

The proposal results in a net increase of soft landscaping on the site. Furthermore, all existing canopy trees on the site will be maintained.

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

Comment:

The existing side walls will be maintained to the dwelling house. Flexibility is afforded with regards to the siting of the carport as no unreasonable amenity or streetscape impacts will occur as a consequence of the development, subject to conditions.

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

Comment:

The retention of the existing canopy trees on the site will assist in visually reducing the built form.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

Comment:

The site does not adjoin commercial development.

Conclusion

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

D10.11 Building envelope (excluding Newport Commercial Centre)

As the slope of the land under the building footprint is greater than 30%, the proposed development is subject to a merit assessment when applying the envelope control.

The proposal involves variations to the standard envelope requirement on the eastern and western side elevations. It is noted that the variations to the envelope provision will remain generally consistent to the existing development on the site given the retention of the existing side boundary walls. Figures 4 and 5 depict the extent of the variations.

Figure 4: eastern elevation envelope breach

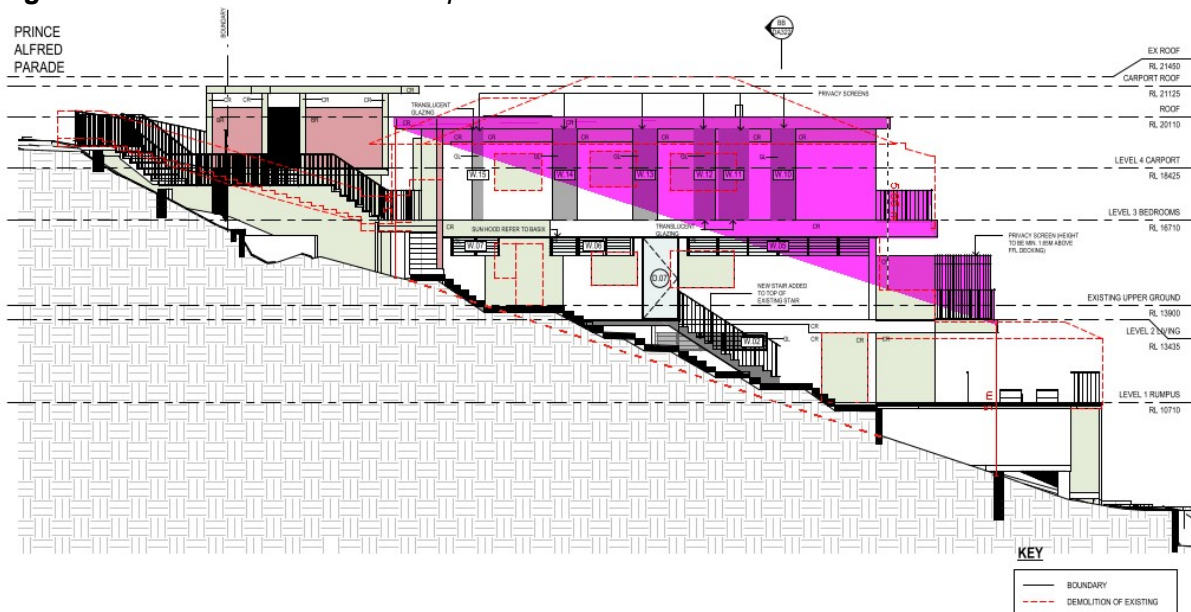
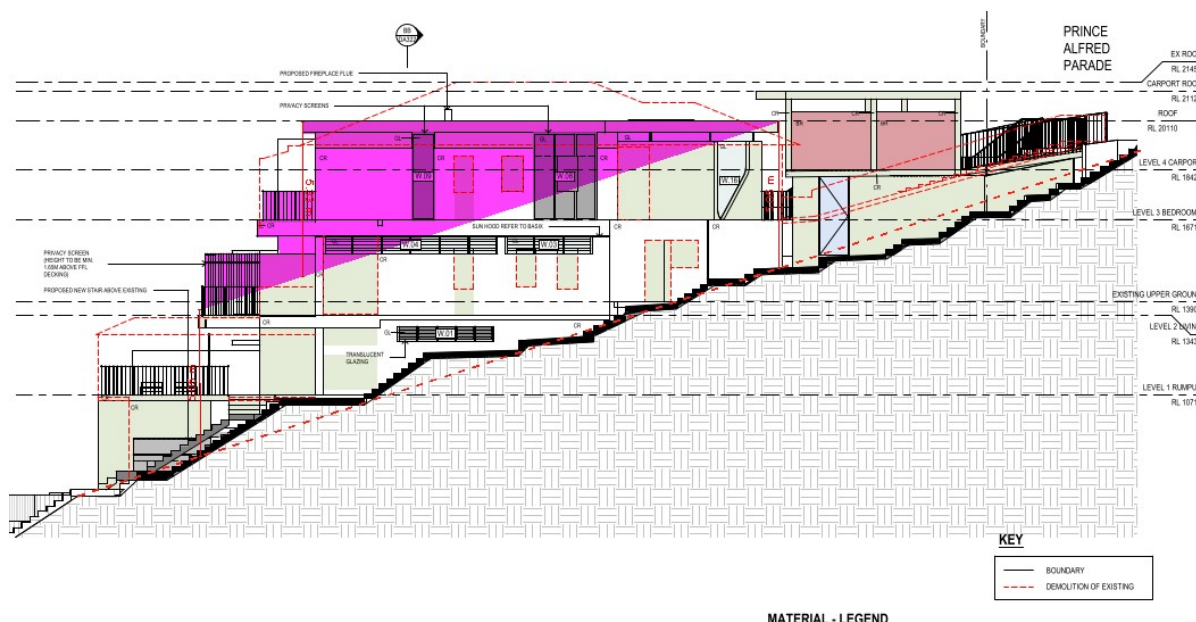


Figure 5: western elevation envelope breach



When considering the development on its merits, it is concluded that the outcomes of the control are achieved. A detailed assessment against the outcomes is provided below as follows:

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

Comment:

As discussed within the section of this report relating to Clause A4.10 of the Pittwater 21 DCP, the proposed development is considered to align with the intent of the Newport Locality Desired Future Character Statement.

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

Comment:

The dwelling presents as a three storey development from the foreshore area, which is consistent with the scale of established dwelling houses within the visual catchment of the site. It is further noted that the height of the roofline will be lowered by 1.34m and that the existing side boundary setbacks will be maintained. Furthermore, the height of the proposal will be below the remaining tree canopy on the site.

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

Comment:

The proposed development responds to the topographical conditions of the site through employing a terraced styled form that steps down in height with the slope of the land, which falls away from the road towards the foreshore area. Furthermore, the building envelope will remain generally consistent given the retention of the existing side walls.

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

Comment:

Whilst the existing walls will be retained, which do not meet the numeric side setback requirements or envelope requirements, the proposed alterations will visually reduce the bulk and scale of the built form as perceived from the foreshore area and Pittwater waterway. This is achieved through reducing the building by 1.34m in height and through employing numerous articulated elements on the rear (north) façade. The resulting development will present as a terraced style built form that steps down in height with the slope of the land. For these reasons, it is considered that the bulk and scale of the dwelling house is appropriately minimised given the circumstances of the case, which involves the retention of existing side walls.

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

Comment:

As discussed earlier within this report, the proposal will allow for reasonable view retention, subject to conditions.

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

Comment:

The proposal has been designed to ensure that a reasonable level of visual privacy is maintained between properties. This is achieved through the provision of fixed privacy screening on the upper floor side elevation windows, inclusive of the side elevations of the level 2 terrace located off the living rooms. Furthermore, lower level windows include high window sills on the side elevations, whilst larger glazed elements are orientated towards the rear (north). In respect to the carport, it is noted that the minor side setback non-compliance will not impact upon the acoustical amenity of adjacent properties due to the separation from habitable spaces. Furthermore, any overlooking that may occur from the carport is not unreasonable as the area is not a highly trafficable area.

Furthermore, noting the north-south orientation of the allotments, sloping topography that falls towards the north and lowering of the roofline, adjacent properties will retain adequate direct sunlight to private open space and north facing living room windows on June 21

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

Comment:

The retention of the existing canopy trees on the site will assist in visually reducing the built form.

Conclusion

As demonstrated above, the proposal is consistent with the outcomes of this control and therefore, is acceptable on merit.

D10.13 Landscaped Area - Environmentally Sensitive Land

The proposal is technically non-compliant with the landscaping requirements of this control, which require at least 60% of the site to be landscaped. Only 33.28% of the site is landscaped.

Despite this, the proposed development results in an increase of soft landscaping throughout the entire site, noting that the existing landscaping represents 30.86% of the site area. Additionally, the proposed development retains all existing canopy trees on the site.

The application has been reviewed by Council's Landscape Officer and Bushland & Biodiversity Officer who raised no objection to the development, subject to conditions.

Under these circumstances, the non-compliance is supported in this instance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$9,850 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$985,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

The proposed development involves alterations and additions to a dwelling house, including a detached double carport and swimming pool at 106 Prince Alfred Parade, Newport.

The maximum height of the proposed development is 10.16m, which exceeds the 8.5m height limit. The applicant has provided sufficient justification for the departure from the development standard in that compliance with the standard is unreasonable in the circumstances of this highly constrained site and the encroachment does not result in any unreasonable impacts to surrounding residential properties.

In addition, the assessment of the proposed development against the provisions of the Pittwater 21 DCP has found that the proposal does not comply with a number of controls (i.e. building envelope and boundary setbacks). Given the constraints on the development by virtue of the steep topography and the retention of existing side elevations of the dwelling house, some flexibility in applying these controls is necessary. There will not be any unreasonable amenity impacts on adjoining properties and the proposal will be consistent with the Desired Future Character Statement of the Newport Locality.

In summary, the proposal is recommended for approval as the siting and design of the dwelling house is responsive and logical and will not result in any unreasonable amenity impacts on surrounding developments or the streetscape and locality character.

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 Buildings development standard pursuant to clause 4.6 of the Pittwater LEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the

standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/1448 for Alterations and additions to a dwelling house, including a detached double carport and swimming pool on land at Lot 25 DP 13457, 106 Prince Alfred Parade, NEWPORT, Lot PO 5606, 106 Prince Alfred Parade, NEWPORT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA002 (Revision A) - Excavation	30/06/2021	Stafford Architecture
DA101 (Revision A) - Site Plan / Roof Plan	30/06/2021	Stafford Architecture
DA110 (Revision A) - Demolition Garage & Roof	21/11/2021	Stafford Architecture
DA120 (Revision A) - Driveway	30/06/2021	Stafford Architecture
DA200 (Revision A) - Level 4 Carport and Roof Plan	30/06/2021	Stafford Architecture
DA201 (Revision A) - Level 3 Bedrooms Plan	30/06/2021	Stafford Architecture
DA202 (Revision A) - Level 2 Living Plan	30/06/2021	Stafford Architecture
DA203 (Revision A) - Level 1 Rumpus Plan	30/06/2021	Stafford Architecture
DA301 (Revision A) - East Elevation	30/06/2021	Stafford Architecture
DA302 (Revision A) - North Elevation	30/06/2021	Stafford Architecture
DA303 (Revision A) - West Elevation	30/06/2021	Stafford Architecture
DA304 (Revision A) - South Elevation	30/06/2021	Stafford Architecture
DA321 (Revision A) - Section - AA - Proposed	30/06/2021	Stafford Architecture
DA322 (Revision A) - Section - BB - Proposed	30/06/2021	Stafford Architecture
DA121 (Revision A) - Material Board	30/06/2021	Stafford Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment Report	8/06/2021	Jacksons Nature Works

Report on Geotechnical Investigation Ref. 2021-092	26/05/2021	Crozier Geotechnical Consultants
BASIX Certificate No. A416550	06/07/2021	Delisle Hunt Wood 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:

Landscape Plans		
Drawing No.	Dated	Prepared By
L100 C - Landscape DA Plan Sheet 1 of 1	22/06/2021	Spirit Level Designs Pty Ltd

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	07/07/2021	Stafford Architecture

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	not dated

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

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

3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal 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.

5. **Boundary Fencing not to encroach over Property Boundaries**

The boundary fencing nominated on the approved plans must be located wholly within the property boundaries. The boundary fencing must not encroach onto adjoining land.

Reason: To ensure that boundary fencing does not encroach onto adjoining land.

6. **No Consent for Solid Fuel Burning Fire Place**

No consent is granted for a solid fuel burning fire place.

Reason: The approved fire place is gas operated.

FEES / CHARGES / CONTRIBUTIONS

7. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$9,850.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$985,000.00.

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

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.

8. **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).

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

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

9. **Stormwater Disposal from Low Level Property**

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular Clause 5.5 Stormwater Drainage from Low Level Properties.

Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's Water Management for Development Policy are to be submitted to the 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.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants dated 26/5/2021 are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

12. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

13. Minor Encroachment Application

The applicant is to submit an Minor Encroachments/ Constructions With Road Reserve Application for the the landscape works and the elevated walkway for approval.

The applicant is to entre into any appropriate agreements with Council. All costs related to the above application are to be borne by the applicant.

A letter from Council indicating this conditions has been satisfied to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Identify the responsibility of the structures on Council road reserve.

14. Amendments to the approved plans

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

- The works to the boat shed, sea wall and jetty, inclusive of any works seaward of the Mean High Water Mark, are not consented to and must be deleted from the plans in their entirety.
- The western wall of the carport must be amended to consist of transparent glazing.

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.

15. Submission Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of vehicular crossing, elevated walkway and associated retaining structures which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. 6.3 meter wide driveway crossing in accordance with Northern Beaches Council Drawing No. A4-3330/5 EL.
2. Structural details for the elevated driveway and associated retaining structures.
3. Safety barriers and sight distances are to be in accordance with AS/NZS 2890.1:2004.
4. A minimum 2.5m road shoulder clearance from the edge of the carriageway shall be maintained clear of obstruction for the proposed elevated walkway.
5. Structural details for the elevated walkway and associated retaining structures.
6. The elevated walkway within the property boundary must not rely on support from within the public road reserve, that is, foundations are to be located within the property.

7. Safety barrier to be provided, within the road reserve, for the existing walkway adjacent to the driveway.
8. Structural Engineer's certification of the design of all retaining walls, elevated walkway, elevated driveway and safety barriers.
9. A Geotechnical report assessing the existing retaining walls in the road reserve with recommendations to ensure their stability is maintained.
10. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided

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 ensure engineering works are constructed in accordance with relevant standards and Council's specification.

16. **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.

17. **Certification and Design of Elevated Parking Facility Work**

The Applicant shall submit a Structural Engineers' design and certificate certifying that the elevated parking facility is designed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls.

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

Reason: Safety and Compliance with this consent.

18. **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.

19. **External Finishes to Roof**

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

Details demonstrating compliance are to be submitted to the 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.

20. **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 for:

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

21. **Dead or Injured Wildlife**

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

Reason: To protect native wildlife.

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

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period. Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. Tree and Vegetation Protection

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the 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.

c) Tree protection measures shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, as listed in section 4 Recommendations, including:

- a) retain the following trees on site: Tree 1, 2, 3, 4, 5 & 6,
- b) trunk protection on trees 1, 2, 3, 4, 5 & 6,
- c) temporary fence of chain wire panels 1.8 metres in height (or equivalent), to trees 1, 2, 3, 4, 5 & 6,
- d) preparation of a Tree Management Plan be prepared as part of the Construction Certificate by a consulting AQF level 5 arborist,
- e) a AQF Level 5 Project Arborist shall be engaged to supervise the building works and certify compliance with all tree protection measures.

The Certifying Authority must ensure that:

d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.

e) 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.

24. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

25. **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.

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

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

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002

- (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

27. Survey Certificate

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

28. Civil Works Supervision

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

29. Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

30. Aboriginal Heritage

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection.

31. **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**

32. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:

i) New landscape works are to be contained within the property boundaries and no physical encroachments are permitted beyond the property boundaries. Any proposed works within the road reserve are the subject of a minor encroachment application to Council.

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

Reason: Environmental amenity.

33. **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 any interim / final Occupation Certificate.

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

34. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

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

Reason: To protect wildlife habitat.

35. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (Spirit

Level Designs, June 2021) and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

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

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

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2021 – 2026) are to be imported on to the site prior to or during construction works.

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

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

37. **Certification Elevated Parking Facility Work**

The Applicant shall submit a Structural Engineers' certificate certifying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation.

Reason: Compliance with this consent.

38. **Retaining wall and Suspended Crossing Certification**

The retaining wall, suspended driveway crossing and suspended walkway in the road reserve works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer.

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

Reason: Public and Private Safety.

39. **Geotechnical Certification Prior to Occupation Certificate**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

40. **Minor Encroachment**

The applicant is to submit the agreement with Council to the Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Identify the responsibility of the structures on Council road reserve.

41. **Swimming Pool Requirements (existing pool modified by works)**

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

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

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 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 warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

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

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

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

Reason: To protect human life.

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

42. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

43. **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.

44. **Storage not to be used for Separate Occupancy**

The approved storage space under the carport is not permitted to be used, or adapted to be used, for separate occupancy.

Reason: Nothing in this consent authorises the use of the site or any onsite structures as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house